



Montana Legislative History

Chapter: 443

Session L: 2003

Checklist of Bill History

Bill Number: 640

House

History and Final Status Sheet ☒

Introduced Bill ☒

Fiscal Note ☐

Third Reading Bill ☒

Final Version of Bill ☒

House	Senate
Committee: Business and Labor	Committee: Business and Labor
Hearing Date(s): 02/21/2003	Hearing Date(s): 03/24/2003
Committee Report:	Committee Report:

Conference Committee

Hearing Date(s):

Conference Committee Report:

Compiler Notes

Compiled by: FLR

Date: October 4, 2023

Notes:

funding county drinking and driving prevention programs as provided in 61-2-108.”

Section 2. Coordination instruction. If Senate Bill No. 37 and [this act] are both passed and approved, then [this act] is void.

Approved April 21, 2003

CHAPTER NO. 443

[HB 640]

AN ACT REVISING LOCAL GOVERNMENT BUILDING CODE AUTHORITY; ELIMINATING THE ABILITY OF A COUNTY TO DESIGNATE A PORTION OF A COUNTY OUTSIDE OF A CITY OR TOWN AS THE COUNTY JURISDICTIONAL AREA; ELIMINATING ELECTION REQUIREMENTS RELATED TO BUILDING CODES; REVISING DEFINITIONS AND THE USE OF DEFINED TERMS; PROVIDING A TRANSITION PERIOD CONCERNING JURISDICTION; AMENDING SECTIONS 13-19-106, 50-3-103, 50-60-101, 50-60-102, 50-60-106, 50-60-107, 50-60-109, 50-60-110, 50-60-115, 50-60-118, 50-60-205, 50-60-211, 50-60-212, 50-60-213, 50-60-301, 50-60-302, 50-60-303, 50-60-404, 50-60-506, 50-60-510, 50-60-604, 50-60-605, AND 50-60-607, MCA; REPEALING SECTIONS 50-60-310, 50-60-311, 50-60-312, 50-60-313, AND 50-60-314, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-19-106, MCA, is amended to read:

“13-19-106. General requirements for mail ballot election — ~~exception for county building code jurisdiction election.~~ A mail ballot election must be conducted substantially as follows:

(1) Official ballots must be prepared and all other initial procedures followed as otherwise provided by law, except that mail ballots are not required to have stubs.

(2) ~~(a) Except as provided in subsection (2)(b), an~~ An official ballot must be mailed to every qualified elector of the political subdivision conducting the election.

~~(b) In an election to determine whether to adopt a building code enforcement program within a county jurisdictional area, as defined in 50-60-101 and designated by a board of county commissioners pursuant to 50-60-310, an official ballot must be mailed to every record owner of real property in the county jurisdictional area.~~

(3) Each return/verification envelope must contain a form prescribed by the secretary of state for the elector to verify the accuracy of the elector's address or notify the election administrator of the elector's correct mailing address and to return the corrected address with the voted ballot in the manner provided by 13-19-306.

(4) The elector shall mark the ballot at home and place it in a secrecy envelope.

(5) The elector shall then place the secrecy envelope containing the elector's ballot in a return/verification envelope and shall return it by mailing it or

delivering it in person to a place of deposit designated by the election administrator so that it is received before a specified time on election day.

(6) Once returned, election officials shall first qualify the submitted ballot by examining the return/verification envelope to determine whether it is submitted by a qualified elector who has not previously voted.

(7) If the ballot qualifies and is otherwise valid, officials shall then open the return/verification envelope and remove the secrecy envelope, which is then voted by depositing it unopened in an official ballot box.

(8) After the close of polls on election day, voted ballots must be counted and canvassed as otherwise provided by law."

Section 2. Section 50-3-103, MCA, is amended to read:

"50-3-103. Rules promulgated by department. (1) Rules promulgated by the department by authority of 50-3-102 must be reasonable and calculated to effect the purposes of this chapter. The rules must include but are not limited to requirements for:

(a) design, construction, installation, operation, storage, handling, maintenance, or use of structural requirements for various types of construction;

(b) building restrictions within congested districts;

(c) exit facilities from structures;

(d) fire extinguishers, fire alarm systems, and fire extinguishing systems;

(e) fire emergency drills;

(f) flue and chimney construction;

(g) heating devices;

(h) electrical wiring and equipment;

(i) air conditioning, ventilating, and other duct systems;

(j) refrigeration systems;

(k) flammable liquids;

(l) oil and gas wells;

(m) application of flammable finishes;

(n) explosives, acetylene, liquefied petroleum gas, and similar products;

(o) calcium carbide and acetylene generators;

(p) flammable motion picture film;

(q) combustible fibers;

(r) hazardous chemicals or materials;

(s) rubbish;

(t) open-flame devices;

(u) parking of vehicles;

(v) dust explosions;

(w) lightning protection;

(x) storage of smokeless powder and small arms primers; and

(y) other special fire hazards.

(2) If rules relate to building and equipment standards covered by the state *building code* or a ~~municipal county, city, or town~~ building code, the rules are effective upon approval of the department of labor and industry and filing with the secretary of state.

(3) Federal or other nationally recognized standards for fire protection may be adopted in whole or in part by reference.

(4) Rules must be adopted as prescribed in the Montana Administrative Procedure Act.

(5) Rules promulgated by the department may not prevent the installation of an aboveground storage tank in a community, city, or town with a population of 1,500 or less if the tank is installed in conformance with all other applicable laws and regulations.

(6) Rules promulgated by the department may not require diked areas or heat-actuated or other shutoff devices for storage tanks containing class I or class II liquids, as defined in the uniform fire code, intended only for private use on farms and ranches.

(7) A person violating any rule made under the provisions of this part is guilty of a misdemeanor."

Section 3. Section 50-60-101, MCA, is amended to read:

"50-60-101. Definitions. As used in parts 1 through 4 and 7 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Alteration" means any change, addition, or modification in construction or occupancy.

(2) "Building" means a combination of any materials, whether mobile, portable, or fixed, to form a structure and the related facilities for the use or occupancy by persons or property. The term must be construed as though followed by the words "or part or parts of a building".

(3) (a) "Building regulations" means any law, rule, resolution, regulation, ordinance, or code, general or special, or compilation of laws, rules, resolutions, regulations, ordinances, or codes enacted or adopted by the state or any municipality, including departments, boards, bureaus, commissions, or other agencies of the state or a municipality relating to the design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings and installation of equipment in buildings.

(b) The term does not include zoning ordinances.

(4) "*City or town*" means an incorporated city or town as provided for in Title 7, chapter 2, part 41.

(4)(5) "Code enforcement program" means the plan for enforcement of the building regulations adopted by a municipality or county and includes the local building department and the staff associated with executing any aspect of the program's purposes or functions.

(5)(6) "Construction" means the original construction and equipment of buildings and requirements or standards relating to or affecting materials used, including provisions for safety and sanitary conditions.

(6) "~~County jurisdictional area~~" means ~~the entire county, or an area or areas within the county, designated by the board of county commissioners as subject to the county building code, excluding any area that is within the limits of an incorporated municipality.~~

(7) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(8) "Equipment" means plumbing, heating, electrical, ventilating, air conditioning, and refrigerating equipment, elevators, dumbwaiters, escalators, and other mechanical additions or installations.

(9) (a) "Factory-built building" means a factory-assembled structure or structures equipped with the necessary service connections but not made so as to be readily movable as a unit or units and designed to be used with a permanent foundation.

(b) The term does not include manufactured housing constructed after June 15, 1976, under the National Mobile Home Construction and Safety Standards Act of 1974, 42 U.S.C. 5401, et seq.

(10) "Local building department" means the agency or agencies of a ~~municipality~~ *county, city, or town* charged with the administration, supervision, or enforcement of building regulations, the approval of plans, the inspection of buildings, or the issuance of permits, licenses, certificates, and similar documents prescribed or required by state or local building regulations.

(11) "Local legislative body" means the council or commission charged with governing the ~~municipality~~ *county, city, or town*.

~~(12) "Municipal jurisdictional area" means the area within the limits of an incorporated municipality.~~

~~(13) "Municipality" means any incorporated city or town.~~

(14)(12) "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a building.

(15)(13) (a) "Primary function area" means an area of a building or facility in which a major activity for which the building or facility is designed is carried out. Primary function areas include but are not limited to a customer service lobby of a savings institution, a cafeteria dining area, and meeting rooms of a conference center.

(b) Areas that are not primary function areas include but are not limited to boiler rooms, storage rooms, employee lounges, janitorial closets, entrances, corridors, and restrooms.

~~(16)~~(14) "Public building" means a building or facility owned or operated by a governmental entity or a private sector building or facility that is open to members of the public.

(17)(15) "Public sidewalk" means a sidewalk located in a public right-of-way.

(18)(16) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own mode of power or is mounted on or towed by another vehicle, including but not limited to a:

- (a) travel trailer;
- (b) camping trailer;
- (c) truck camper; or
- (d) motor home.

~~(19)~~(17) "Site" means a parcel of land bounded by property lines or a designated portion of a public right-of-way.

(20)(18) "State agency" means any state officer, department, board, bureau, commission, or other agency of this state.

(21)(19) "State building code" means the state building code provided for in 50-60-203 or any portion of the code of limited application and any of its modifications or amendments."

Section 4. Section 50-60-102, MCA, is amended to read:

"50-60-102. Applicability. (1) Except as provided in subsection (5), the state building code, as defined in 50-60-203(3), does not apply to:

(a) residential buildings containing less than five dwelling units or their attached-to structures, any farm or ranch building of any size, and any private garage or private storage structure of any size used only for the owner's own use, located within ~~the municipality's or county's jurisdictional area~~ *a county, city, or town*, unless the local legislative body ~~or board of county commissioners~~ by ordinance or resolution makes the state building code applicable to these structures;

(b) mines and buildings on mine property regulated under Title 82, chapter 4, and subject to inspection under the Federal Mine Safety and Health Act;

(c) petroleum refineries and pulp and paper mills, except a structure classified under chapter 7, section 701, group B, division 2, and chapter 9, section 901, group H, outside of process units, of the 1991 edition of the Uniform Building Code; or

(d) industrial process piping, vessels, and equipment and process-related structures located outside of another structure occupied on a regular basis by employees or the public.

(2) Except as provided in subsection (5), the state may not enforce the state building code under 50-60-205 for the buildings referred to in subsection (1). ~~Local governments~~ *A county, city, or town* that ~~have~~ *has* made the state building code applicable to the buildings referred to in subsection (1) may enforce within ~~their jurisdictional areas~~ *the area of its jurisdiction* the state building code as adopted by the ~~respective local government~~ *county, city, or town*.

(3) When good and sufficient cause exists, a written request for limitation of the state building code may be filed with the department for filing as a permanent record.

(4) The department may limit the application of any rule or portion of the state building code to include or exclude:

(a) specified classes or types of buildings according to use or other distinctions as may make differentiation or separate classification or regulation necessary, proper, or desirable;

(b) specified areas of the state based on size, population density, special conditions prevailing in the area, or other factors that make differentiation or separate classification or regulation necessary, proper, or desirable.

(5) (a) For purposes of promoting the energy efficiency of home design and operation, the provisions of the state building code relating to energy conservation adopted pursuant to 50-60-203(1) apply to residential buildings, except:

(i) farm and ranch buildings; and

(ii) any private garage or private storage structure attached to a residential building and used only for the owner's own use.

(b) The provisions of the state building code relating to energy conservation in residential buildings are enforceable:

(i) by the department only for those residential buildings containing five or more dwelling units or otherwise subject to the state building code; and

(ii) through the builder self-certification program provided for in 50-60-802 for those residential buildings containing less than five dwelling units and not otherwise subject to the state building code."

Section 5. Section 50-60-106, MCA, is amended to read:

"50-60-106. Powers and duties of municipalities counties, cities, and towns. (1) The examination, approval, or disapproval of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and similar documents, the inspection of buildings, and the administration and enforcement of building regulations within the ~~municipal jurisdictional area~~ limits of a city or town are the responsibility of the ~~municipalities~~ city or town of the state. *The examination, approval, or disapproval of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and similar documents, the inspection of buildings, and the administration and enforcement of building regulations within the portion of a county that is covered by a county building code are the responsibility of the county.*

(2) Each ~~municipality~~ or county, city, or town certified under 50-60-302 shall, within its jurisdictional area:

(a) examine, approve, or disapprove plans and specifications for the construction of any building, the construction of which is pursuant or purports to be pursuant to the applicable provisions of the state *building code* or ~~municipal county, city, or town~~ building code, and direct the inspection of the buildings during and in the course of construction;

(b) require that construction of buildings be in accordance with the applicable provisions of the state *building code* or ~~municipal county, city, or town~~ building code, subject to the powers of variance or modification granted to the department;

(c) make available to building contractors at a price that is commensurate with reproduction costs a checklist devised by the department pursuant to 50-60-118 for single-family dwellings and provide to contractors who attach a completed checklist to the plans submitted for examination the relevant building permit or notice of plan disapproval within 10 working days of the contractor's submission;

(d) during and in the course of construction, order in writing the remedying of any condition found to exist in, on, or about any building that is being constructed in violation of the ~~applicable~~ state *building code* or ~~municipal county, city, or town~~ building code. Orders may be served upon the owner or the owner's authorized agent personally or by sending by certified mail a copy of the order to the owner or the owner's authorized agent at the address set forth in the application for permission for the construction of the building. A local building department, by action of an authorized officer, may grant in writing time as may be reasonably necessary for achieving compliance with the order. For the purposes of this subsection (2)(d), the phrase "during and in the course of construction" refers to the construction of a building until all necessary building permits have been obtained and the municipality or county has issued formal written approvals or has issued a certificate of occupancy for the building.

- (e) issue certificates of occupancy as provided in 50-60-107;
- (f) issue permits, licenses, and other required documents in connection with the construction of a building;
- (g) ensure that all construction-related fees or charges imposed and collected by the municipality or county are necessary, reasonable, and uniform and are:

- (i) except as provided in subsection (2)(g)(iii), used only for building code enforcement, which consists of those necessary and reasonable costs directly and specifically identifiable for the enforcement of building codes, plus indirect costs charged on the same basis as other local government proprietary funds not paying administrative charges as direct charges. If indirect costs are waived for any local government proprietary fund, they must also be waived for the program established in this section. Indirect charges are limited to the charges that are allowed under federal cost accounting principles that are applicable to a local government.

- (ii) reduced if the amount of the fees or charges accumulates above the amount needed to enforce building codes for 12 months. The excess must be placed in a reserve account and may only be used for building code enforcement. Collection and expenditure of fees and charges must be fully documented.

- (iii) allocated and remitted to the department, in an amount not to exceed 0.5% of the building fees or charges collected, for the building codes education program established in 50-60-116.

(3) Each ~~municipality or county~~ *county, city, or town with a building code enforcement program that has been certified under 50-60-302* may, within its ~~jurisdiction~~ *the area of its jurisdiction*:

- (a) make, amend, and repeal rules for the administration and enforcement of the provisions of this section and for the collection of fees and charges related to construction;

- (b) prohibit the commencement of construction until a permit has been issued by the local building department after a showing of compliance with the requirements of the applicable provisions of the state *building code* or ~~municipal county, city, or town~~ building code; and

- (c) enter into a private contract with the owner or builder of a building that is not or will not be within the jurisdiction of the ~~municipality or county, city, or town~~ under which the ~~municipality or county, city, or town~~ will provide reviews, inspections, orders, and certificates of occupancy for a fee and under conditions agreed upon by the parties. ~~Municipal or county~~ *County, city, or town* powers of enforcement may not be exercised."

Section 6. Section 50-60-107, MCA, is amended to read:

"50-60-107. Certificate of occupancy. (1) A certificate of occupancy for a building constructed in accordance with the provisions of the state *building code* or ~~municipal county, city, or town~~ building code ~~shall~~ *must* certify that the building conforms to the requirements of the building regulations applicable to it.

(2) Every certificate of occupancy, unless and until set aside or vacated by a court of competent jurisdiction, is binding and conclusive upon all ~~municipal county, city, or town~~ agencies as to all matters set forth, and ~~no~~ *an* order, directive, or requirement at variance ~~therewith~~ *with the certificate of occupancy*

may *not* be made or issued by any other state *agency* or ~~municipal~~ county, city, or town agency."

Section 7. Section 50-60-109, MCA, is amended to read:

"50-60-109. Injunctions authorized. (1) The construction or use of the building in violation of any provision of the state *building code* or ~~municipal~~ county, city, or town building code or any lawful order of a state building official or a local building department may be enjoined by a judge of the district court in the judicial district in which the building is located.

(2) This section ~~will be~~ is governed by the Montana Rules of Civil Procedure."

Section 8. Section 50-60-110, MCA, is amended to read:

"50-60-110. Violation a misdemeanor. Any person served with an order pursuant to the provisions of parts 1 through 4 who fails to comply with the order not later than 30 days after service or within the time fixed by the department or a local building department for compliance, whichever is the greater, or any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent, their agents, or any person taking part or assisting in the construction or use of any building who knowingly violates any of the applicable provisions of the state building code or ~~a municipal~~ county, city, or town building code is guilty of a misdemeanor."

Section 9. Section 50-60-115, MCA, is amended to read:

"50-60-115. Building codes council — purpose and structure. (1) There is a building codes council for the purpose of assisting the department with the application, implementation, and interpretation of the state building code and building codes adopted by ~~local governments~~ counties, cities, or towns. The council shall work cooperatively with the department and with representatives of the construction industry, as well as members of the interested public, to harmonize building codes and related rules with both the needs of the construction industry and the public interest in efficiency, cost-effectiveness, and safety.

(2) The council consists of 11 members appointed by the governor, unless otherwise specified, as follows:

- (a) a practicing architect licensed in Montana;
- (b) a practicing professional engineer licensed in Montana;
- (c) a representative from the building contractor industry;
- (d) a ~~municipal~~ county, city, or town building inspector;
- (e) a representative of the manufactured housing industry;
- (f) a member of the general public who does not hold public office and who does not represent the same industry or agency as another council member;
- (g) the director of the department of health and human services or the director's designee;
- (h) a licensed electrician selected by the board of electricians;
- (i) a licensed plumber selected by the board of plumbers;
- (j) the state fire marshal or the fire marshal's designee; and
- (k) a representative of the home building industry.

(3) The appointed council members serve at the pleasure of the governor for terms of 3 years.

(4) The council is allocated to the department for administrative purposes only as provided in 2-15-121.

(5) The council and its members are entitled to compensation as provided in 2-15-122."

Section 10. Section 50-60-118, MCA, is amended to read:

"50-60-118. Examination of single-family dwelling plans — statewide approval for model plans — fee adjustments — mandatory checklist. (1) The department shall accept for examination and approval or disapproval all model construction plans for single-family dwellings submitted to the department.

(2) Once a model construction plan has been approved, the department shall indicate in writing on the approved plan that the plan is acceptable on a statewide basis and that no further examination is warranted except with respect to:

- (a) zoning;
- (b) footings, foundations, and basements;
- (c) curbs;
- (d) gutters;
- (e) landscaping;
- (f) utility connections;
- (g) street requirements;
- (h) sidewalks; and
- (i) other requirements specifically related to the exterior of the building.

(3) Local building departments shall reduce plan examination fees commensurate with the reduced time and effort expended resulting from the department's examination provided for in subsection (1).

(4) This section may not be construed to reduce the requirements for obtaining permits for onsite inspection of the residence under construction pursuant to 50-60-106.

(5) (a) The department shall devise a checklist for the examination of single-family dwelling construction plans by the department and by the building code enforcement officials of ~~municipalities and counties, cities, and towns.~~

(b) The checklist must be based upon the most recently adopted edition of the council of American building officials One and Two Family Dwelling Code, as amended.

(c) The checklist is subject to review and amendment by the building codes council provided for in 50-60-115.

(d) The checklist must be made available to building contractors at a price that is commensurate with reproduction costs, and a building contractor who uses the checklist and attaches it to the plans that the contractor submits to the department or a ~~municipality or county, city, or town~~ for examination is entitled to receive the relevant building permit or notice of disapproval within 10 days of submission of the completed checklist."

Section 11. Section 50-60-205, MCA, is amended to read:

"50-60-205. When state building code applies — health care facility and public health center doors. (1) If a ~~municipality or county, city, or town~~ does not adopt a building code as provided in 50-60-301, the state building code applies within the ~~municipal or county, city, or town jurisdictional area~~ and the state will enforce the code in these areas.

(2) Any provision of a building code requiring the installation or maintenance of self-closing or automatic closing corridor doors to patient rooms does not apply to health care facilities as defined in 50-5-101 or to a public health center as defined in 7-34-2102."

Section 12. Section 50-60-211, MCA, is amended to read:

"50-60-211. Inspections. (1) The construction of a public building or alteration to a primary function area of a public building must be inspected for physical accessibility to persons with disabilities.

(2) The inspection must include the building site, including applicable exterior features, such as parking areas, passenger loading zones, private sidewalks, and the accessibility from adjacent public sidewalks, public streets, and public transportation stops.

(3) (a) The inspections must be completed by state building inspectors in areas not covered by a ~~municipal or county, city, or town~~ building code.

(b) (i) ~~Municipalities and counties~~ *Counties, cities, and towns* that have adopted a building code may assign appropriately trained personnel to perform site inspections conducted pursuant to this part.

(ii) ~~Municipalities and counties~~ *Counties, cities, and towns* conducting inspections pursuant to this section must have an enforcement mechanism in place to ensure compliance with the accessibility provisions of this part, including but not limited to denying building permits or certificates of occupancy, injunctions, or other civil enforcement procedures allowed by law.

(4) Existing public buildings that are not undergoing an alteration to a primary function area are not subject to the inspection provisions of this section."

Section 13. Section 50-60-212, MCA, is amended to read:

"50-60-212. Disclaimer. A building permit or certificate of occupancy issued by the state or by a ~~municipality or county, city, or town~~ must contain a statement that reads: "Compliance with the requirements of the state building code for physical accessibility to persons with disabilities does not necessarily guarantee compliance with the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, the Fair Housing Amendments Act of 1988, Title 49, chapter 2, commonly known as the Montana Human Rights Act, or other similar federal, state, or local laws that mandate accessibility to commercial construction or multifamily housing.""

Section 14. Section 50-60-213, MCA, is amended to read:

"50-60-213. Accessible exterior routes — exceptions. (1) Except as provided in subsection (6), for a public building, an accessible exterior route must be provided from public transportation stops located within the boundary of the building site, from accessible parking and accessible passenger loading zones within the boundaries of the building site, and from public sidewalks that are immediately adjacent to the building site, if sidewalks exist, to the building's accessible entrance served by the transportation stops, parking and loading zones, or sidewalks.

(2) (a) When more than one public building is located on a site, at least one accessible exterior route must connect accessible elements, facilities, and buildings that are on the site.

(b) For the purposes of 50-60-214 and this section, "element" means an architectural or mechanical component of a public building, facility, space, or site and includes but is not limited to telephones, curb ramps, doors, drinking fountains, seating, and water closets.

(3) An accessible exterior route between accessible public parking and an accessible building entrance must be the most practical direct route.

(4) (a) A person or entity constructing a public building is not required to fully comply with the provisions of this section if the person can demonstrate that due to characteristics of the terrain, it is structurally impractical to fully comply.

(b) Full compliance may be considered structurally impractical only in those rare circumstances when the unique characteristics of the terrain prevent the incorporation of accessibility features.

(c) The person or entity shall comply with the provisions of this section to the extent that compliance is not structurally impractical.

(d) The department shall adopt rules to assist all interested parties involved in the design, construction, and inspection processes in determining structural impracticality.

(5) (a) If a paved parking lot is not planned or present for a public building, a person or entity constructing the public building is not required to pave the entire lot, unless otherwise required by law, ordinance, or applicable building code, but shall provide pavement or a similarly firm, stable, and slip-resistant surface for parking spaces designated for persons with disabilities.

(b) An accessible exterior route with a suitably firm, stable, and slip-resistant surface must be provided from the designated parking spaces to an accessible building or facility entrance.

(c) The total number of designated accessible parking spaces in a parking lot or area must be the number provided for in the applicable state *building code* or ~~local government~~ *county, city, or town building code*.

(6) An accessible route is not required in cases where there is not a pedestrian route for the general public.

(7) The state, ~~municipalities, and~~ *counties, cities, and towns* shall use the same accessibility standards."

Section 15. Section 50-60-301, MCA, is amended to read:

"50-60-301. ~~Municipal and county~~ *County, city, and town building codes authorized — health care facility and public health center doors — fee adjustment for model plans.* (1) The local legislative body of a ~~municipality or county, city, or town~~ may adopt a building code to apply to the ~~municipal or county, city, or town jurisdictional area~~ by an ordinance or resolution, as appropriate:

(a) adopting a building code; or

(b) authorizing the adoption of a building code by administrative action.

(2) A ~~municipal or~~ *county, city, or town* building code may include only codes adopted by the department.

(3) Any provision of a building code requiring the installation or maintenance of self-closing or automatic closing corridor doors to patient rooms does not apply to health care facilities, as defined in 50-5-101, or to a public health center, as defined in 7-34-2102.

(4) (a) When the same single-family dwelling plan is constructed at more than one site, the ~~municipality or~~ county, city, or town shall, after the first examination of the plan, adjust the required plan fee to reflect only the cost of reviewing requirements pertaining to the review of:

- (i) zoning;
- (ii) footings, foundations, and basements;
- (iii) curbs;
- (iv) gutters;
- (v) landscaping;
- (vi) utility connections;
- (vii) street requirements;
- (viii) sidewalks; and
- (ix) other requirements related specifically to the exterior of the building.

(b) If a building contractor alters the single-family dwelling plan referred to in subsection (4)(a) in a fashion that substantially affects the building code requirements, the ~~municipality or~~ county, city, or town may impose the full examination fee permitted under 50-60-106."

Section 16. Section 50-60-302, MCA, is amended to read:

"50-60-302. Certification of ~~municipal and~~ county, city, or town building codes. (1) A county, ~~or municipality~~ city, or town may not enforce a building code unless:

(a) the code enforcement program has been certified by the department as in compliance with applicable statutes and department certification rules;

(b) the current adopted code, a current list of fees to be imposed, and a current plan for enforcement of the code have been filed with and approved by the department; and

(c) all inspectors inspecting or approving any installations, which if accomplished commercially require state licensure, must themselves be properly and currently state-licensed as journeymen in that craft or occupation or be certified by a nationally recognized entity for testing and certification of inspectors that is approved by the department before being permitted to inspect or approve any installations.

(2) The department shall adopt additional rules and standards governing the certification of ~~municipal and~~ county, city, and town building code enforcement programs that must include provisions for prompt revocation of certification for refusal or failure to comply with any applicable statute or rule. The department may allow a county, ~~or municipality~~ city, or town a reasonable amount of time, not to exceed 6 months, to correct identified code enforcement program deficiencies, unless the deficiencies constitute an immediate threat to the public health, safety, or welfare, in which case the department may require immediate correction. Failure to correct deficiencies within the time set by the department constitutes a basis for immediate decertification of the code enforcement program. Continued operation of a county, ~~or municipal~~ city, or

town code enforcement program in violation of a department order to correct deficiencies may be enjoined or subject to a writ of mandamus by a judge of the district court in the jurisdiction in which the county, ~~or municipality~~ *city, or town* is located. The rules and standards must include provisions for the department to ensure that all code enforcement program functions are being properly performed.

(3) If the certification of any local government code enforcement program is revoked for any violation or deficiency, the state resumes its original jurisdiction for state building code enforcement within the ~~municipal~~ *or county, city, or town* area and the local government retains the responsibility for completion of inspections and issuance of certificates of occupancy on any incomplete construction projects previously permitted by the ~~local government~~ *county, city, or town*, unless the reason for the decertification is directly related to the protection of health, safety, and welfare of the public.

(4) If a ~~local government~~ *county, city, or town* voluntarily decertifies its code enforcement program, the department must be given written notification of the intended decertification at least 90 days prior to the date of decertification. The ~~local government~~ *county, city, or town* retains the responsibility for completion of inspections and issuance of certificates of occupancy on any incomplete construction projects permitted by the ~~local government~~ *county, city, or town* prior to decertifying its code enforcement program."

Section 17. Section 50-60-303, MCA, is amended to read:

"50-60-303. ~~Municipal and county~~ *County, city, or town* appeal procedure. (1) If a ~~municipality~~ *or county, city, or town* adopts a building code, it shall also establish an appeal procedure by ordinance *or resolution, as appropriate*, that is acceptable to the department.

(2) If a ~~municipality~~ *or county, city, or town* does not adopt a code, appeals on the application of the state building code within the ~~municipal~~ *or county, city, or town* ~~jurisdictional area~~ must be made to the department."

Section 18. Section 50-60-404, MCA, is amended to read:

"50-60-404. Enforcement of building construction standards for modular homes. (1) The provisions of this chapter apply to factory-built modular or prebuilt homes or buildings.

(2) A ~~municipality~~ *county, city, or town* may regulate the construction of factory-built modular or prebuilt homes or buildings as provided in 50-60-106 if:

(a) the homes or buildings are constructed inside the jurisdiction of the ~~municipality~~ *county, city, or town*;

(b) the homes or buildings are sold primarily to persons in the county in which the factory is located;

(c) the factory does not manufacture more than 100 homes or buildings a year; and

(d) the ~~municipality~~ *county, city, or town* has an agency or officer assigned to inspect and enforce building construction standards.

(3) Inspection and enforcement approval given by a ~~municipality~~ *county, city, or town* under this section may be recognized and accepted by any other ~~municipality~~ *county, city, or town* of the state to which the factory-built home or building is transported for final installation. Additional inspections need not be conducted."

Section 19. Section 50-60-506, MCA, is amended to read:

"50-60-506. Exceptions to permit requirement. (1) ~~No~~ A permit is *not* required for any minor replacement or repair work, the performance of which does not have a significant potential for creating a condition hazardous to public health and safety.

(2) ~~No~~ A permit is *not* required where the installation is exempt under the provisions of 37-69-102 or 50-60-503.

(3) ~~No~~ A state permit is *not* required whenever the installation occurs in an area governed by a ~~municipality~~ county, city, or town and where there is in effect a ~~municipal~~ county, city, or town building code ~~which that~~ covers plumbing installations and ~~which that~~ provides inspection procedures.

(4) ~~Nothing contained in this~~ This part ~~shall does not~~ prohibit the owner of residential property from making an installation for all sanitary plumbing and potable water supply piping without a permit ~~providing he if the owner personally does the work himself.~~

(5) The provisions of this part do not apply to regularly employed maintenance personnel doing maintenance work on the business premises of their employer unless *the* work is subject to the permit provisions of this part."

Section 20. Section 50-60-510, MCA, is amended to read:

"50-60-510. Inspections to ensure compliance. All plumbing and drainage systems may be inspected by the department of labor and industry or an authorized representative or ~~by a municipality or~~ county, city, or town certified to perform an inspection pursuant to 50-60-302 in order to ensure compliance with the requirements of the state plumbing code. As part of any inspection, the inspector shall request proof of licensure from any person who is required to be licensed who is involved with or, in the inspector's judgment, appears to be involved with plumbing activities if the person is on the site. The inspector shall report any instance of license violation to the inspector's employing agency, and the employing agency shall in turn report the violation to the board of plumbers."

Section 21. Section 50-60-604, MCA, is amended to read:

"50-60-604. Inspections — electrical permits — fees. The department of labor and industry or an authorized representative or a ~~municipality or~~ county, city, or town certified to perform an inspection pursuant to 50-60-302 shall inspect electrical installations, issue electrical permits for these installations, and establish and charge a reasonable and uniform fee for the inspections. The fee must be commensurate with the expense of providing the inspection and with appropriations for other purposes. As part of any inspection, the inspector shall require proof of licensure from any person who is required to be licensed who is involved with or, in the inspector's judgment, appears to be involved with electrical installations if the person is on the site. The inspector shall report any instance of license violation to the inspector's employing agency, and the employing agency shall in turn report the violation to the board of electricians."

Section 22. Section 50-60-605, MCA, is amended to read:

"50-60-605. Power supplier not to energize installation without electrical permit. Individuals, firms, cooperatives, corporations, or municipalities selling electricity are power suppliers. Except for temporary connections that the department of labor and industry may authorize by rule for

a period not exceeding 14 days without a preconnection inspection, power suppliers may not connect with or energize an electrical installation under this part unless the owner or a licensed electrical contractor has delivered to the power supplier an electrical permit covering the installation, issued by the department of labor and industry or a ~~municipality or~~ county, city, or town certified to enforce the electrical code pursuant to 50-60-302."

Section 23. Section 50-60-607, MCA, is amended to read:

"50-60-607. Energizing electrical installation without permit — misdemeanor. Any person, partnership, company, firm, association, or corporation, other than a power supplier, that energizes an electrical installation under this part for which an electrical permit has not been issued by the department of labor and industry or a ~~municipality or~~ county, city, or town certified to enforce the electrical code pursuant to 50-60-302 is guilty of a misdemeanor."

Section 24. Area of applicability of county, city, or town building code — enforcement. (1) A city or town that adopts a building code under this chapter may enforce its building code only within the incorporated limits of the city or town.

(2) A county may adopt a building code under this chapter on a countywide basis unless a city or town within the county has adopted a building code. If a city or town within the county has adopted a building code, then the county may not enforce the county building code in that city or town.

(3) A county, city, or town may contract for the enforcement of its building code.

Section 25. Transition. (1) A municipality is responsible for completing inspections that are required for those building, electrical, plumbing, and mechanical permits issued by the municipality in an extended jurisdictional area prior to October 1, 2003.

(2) A project in an extended jurisdictional area that required a building permit prior to October 1, 2003, is subject to city or town jurisdiction until the project is completed. A municipality may not apply its building code to a new project after October 1, 2003.

(3) A county that has not adopted a building code prior to [the effective date of this section] may adopt a building code, but the building code may not be effective before October 1, 2003.

Section 26. Repealer. Sections 50-60-310, 50-60-311, 50-60-312, 50-60-313, and 50-60-314, MCA, are repealed.

Section 27. Codification instruction. [Section 24] is intended to be codified as an integral part of Title 50, chapter 60, part 3, and the provisions of Title 50, chapter 60, part 3, apply to [section 24].

Section 28. Effective dates. (1) Except as provided in subsection (2), [this act] is effective October 1, 2003.

(2) [Section 25 and this section] are effective on passage and approval.

Approved April 21, 2003

Bill Draft Number: LC1526

Bill Type - Number: HB 640

Short Title: Revise local government building code authority

Primary Sponsor: Dick Haines (R) HD 63

Chapter Number: 443

Bill Actions - Current Bill Progress: Became Law

Bill Action Count: 62

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	04/22/2003			
(H) Signed by Governor	04/21/2003			
(H) Transmitted to Governor	04/16/2003			
(S) Signed by President	04/15/2003			
(H) Signed by Speaker	04/15/2003			
(H) Returned from Enrolling	04/14/2003			
(C) Printed - New Version Available	04/14/2003			
(C) Printed - New Version Available	04/14/2003			
(H) Sent to Enrolling	04/12/2003			
(H) 3rd Reading Passed as Amended by Senate	04/11/2003	66	31	
(H) Scheduled for 3rd Reading	04/11/2003			
(H) 2nd Reading Senate Amendments Concurred	04/10/2003	74	24	
(H) Scheduled for 2nd Reading	04/10/2003			
(S) Returned to House with Amendments	04/05/2003			
(S) 3rd Reading Concurred	04/05/2003	29	21	
(S) Scheduled for 3rd Reading	04/05/2003			
(S) 2nd Reading Concurred	04/04/2003	28	21	
(S) Scheduled for 2nd Reading	04/04/2003			
(C) Printed - New Version Available	04/01/2003			
(S) Committee Report--Bill Concurred as Amended	04/01/2003			(S) Business and Labor
(S) Committee Executive Action--Bill Concurred as Amended	04/01/2003	10	0	(S) Business and Labor
(S) Hearing	03/24/2003			(S) Business and Labor
(S) Hearing Canceled	03/07/2003			(S) Local Government
(S) Rereferred to Committee	03/07/2003			(S) Business and Labor
(S) Referred to Committee	02/28/2003			(S) Local Government
(S) First Reading	02/28/2003			
(H) Transmitted to Senate	02/27/2003			
(H) 3rd Reading Passed	02/27/2003	60	38	

(H) Scheduled for 3rd Reading	02/27/2003		
(H) 2nd Reading Passed	02/26/2003	61	38
(H) Scheduled for 2nd Reading	02/26/2003		
(C) Printed - New Version Available	02/22/2003		
(H) Committee Report--Bill Passed	02/22/2003		(H) Business and Labor
(H) Committee Executive Action--Bill Passed	02/21/2003	13	5 (H) Business and Labor
(H) Hearing	02/21/2003		(H) Business and Labor
(C) Introduced Bill Text Available Electronically	02/14/2003		
(H) Referred to Committee	02/14/2003		(H) Business and Labor
(H) First Reading	02/14/2003		
(H) Introduced	02/14/2003		
(C) Draft Delivered to Requester	02/13/2003		
(C) Draft Ready for Delivery	02/13/2003		
(C) Draft in Assembly/Executive Director Review	02/13/2003		
(C) Draft in Final Drafter Review	02/13/2003		
(C) Draft in Input/Proofing	02/12/2003		
(C) Draft to Drafter - Edit Review [JLN]	02/12/2003		
(C) Draft in Edit	02/12/2003		
(C) Draft in Legal Review	02/12/2003		
(C) Draft Back for Redo	02/12/2003		
(C) Draft in Legal Review	02/11/2003		
(C) Draft to Requester for Review	02/07/2003		
(C) Draft Back for Redo	02/07/2003		
(C) Draft Ready for Delivery	02/06/2003		
(C) Draft in Assembly/Executive Director Review	02/06/2003		
(C) Draft in Final Drafter Review	02/06/2003		
(C) Bill Draft Text Available Electronically	02/06/2003		
(C) Draft in Input/Proofing	02/06/2003		
(C) Draft to Drafter - Edit Review [JLN]	02/06/2003		
(C) Draft in Edit	02/06/2003		
(C) Draft in Legal Review	02/05/2003		
(C) Draft to Requester for Review	02/01/2003		
(C) Draft On Hold	12/23/2002		
(C) Draft Request Received	12/05/2002		

Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name	Mi
Requester	Haines	Dick	
Drafter	Petes	Greg	

Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Buildings and Building Regulations		Simple	BUI
Local Government (see also: City Subjects; County Subjects)		Simple	LG

Additional Bill Information

Fiscal Note Probable: No

Preintroduction Required: N

Session Law Ch. Number: 443

DEADLINE

Category: General Bills

Transmittal Date: 02/28/2003

Return (with 2nd house amendments) Date: 04/05/2003

Section Effective Dates

Section(s)	Effective Date	Date Qualified
Sections 1-24, 26 and 27	01-OCT-03	
Sections 25 and 28	21-APR-03	

HOUSE BILL NO. 640

INTRODUCED BY D. HAINES

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LOCAL GOVERNMENT BUILDING CODE AUTHORITY; ELIMINATING THE ABILITY OF A COUNTY TO DESIGNATE A PORTION OF A COUNTY OUTSIDE OF A MUNICIPALITY AS THE COUNTY JURISDICTIONAL AREA; ELIMINATING ELECTION REQUIREMENTS RELATED TO BUILDING CODES; AMENDING SECTIONS 13-19-106, 50-60-101, 50-60-310, AND 50-60-311, MCA; REPEALING SECTIONS 50-60-312, 50-60-313, AND 50-60-314, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 13-19-106, MCA, is amended to read:

"13-19-106. General requirements for mail ballot election --exception for county building code jurisdiction election. A mail ballot election must be conducted substantially as follows:

(1) Official ballots must be prepared and all other initial procedures followed as otherwise provided by law, except that mail ballots are not required to have stubs.

(2) ~~(a) Except as provided in subsection (2)(b), an~~ An official ballot must be mailed to every qualified elector of the political subdivision conducting the election.

~~(b) In an election to determine whether to adopt a building code enforcement program within a county jurisdictional area, as defined in 50-60-101 and designated by a board of county commissioners pursuant to 50-60-310, an official ballot must be mailed to every record owner of real property in the county jurisdictional area.~~

(3) Each return/verification envelope must contain a form prescribed by the secretary of state for the elector to verify the accuracy of the elector's address or notify the election administrator of the elector's correct mailing address and to return the corrected address with the voted ballot in the manner provided by 13-19-306.

(4) The elector shall mark the ballot at home and place it in a secrecy envelope.

(5) The elector shall then place the secrecy envelope containing the elector's ballot in a return/verification envelope and shall return it by mailing it or delivering it in person to a place of deposit designated by the election administrator so that it is received before a specified time on election day.

(6) Once returned, election officials shall first qualify the submitted ballot by examining the return/verification envelope to determine whether it is submitted by a qualified elector who has not previously

voted.

(7) If the ballot qualifies and is otherwise valid, officials shall then open the return/verification envelope and remove the secrecy envelope, which is then voted by depositing it unopened in an official ballot box.

(8) After the close of polls on election day, voted ballots must be counted and canvassed as otherwise provided by law."

Section 2. Section 50-60-101, MCA, is amended to read:

"50-60-101. Definitions. As used in parts 1 through 4 and 7 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Alteration" means any change, addition, or modification in construction or occupancy.

(2) "Building" means a combination of any materials, whether mobile, portable, or fixed, to form a structure and the related facilities for the use or occupancy by persons or property. The term must be construed as though followed by the words "or part or parts of a building".

(3) (a) "Building regulations" means any law, rule, resolution, regulation, ordinance, or code, general or special, or compilation of laws, rules, resolutions, regulations, ordinances, or codes enacted or adopted by the state or any municipality, including departments, boards, bureaus, commissions, or other agencies of the state or a municipality relating to the design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings and installation of equipment in buildings.

(b) The term does not include zoning ordinances.

(4) "Code enforcement program" means the plan for enforcement of the building regulations adopted by a municipality or county and includes the local building department and the staff associated with executing any aspect of the program's purposes or functions.

(5) "Construction" means the original construction and equipment of buildings and requirements or standards relating to or affecting materials used, including provisions for safety and sanitary conditions.

(6) "County jurisdictional area" means the entire county, ~~or an area or areas within the county, designated by the board of county commissioners as subject to the county building code,~~ excluding any area that is within the limits of an incorporated municipality that has adopted a building code.

(7) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(8) "Equipment" means plumbing, heating, electrical, ventilating, air conditioning, and refrigerating equipment, elevators, dumbwaiters, escalators, and other mechanical additions or installations.

(9) (a) "Factory-built building" means a factory-assembled structure or structures equipped with the

necessary service connections but not made so as to be readily movable as a unit or units and designed to be used with a permanent foundation.

(b) The term does not include manufactured housing constructed after June 15, 1976, under the National Mobile Home Construction and Safety Standards Act of 1974, 42 U.S.C. 5401, et seq.

(10) "Local building department" means the agency or agencies of a municipality charged with the administration, supervision, or enforcement of building regulations, the approval of plans, the inspection of buildings, or the issuance of permits, licenses, certificates, and similar documents prescribed or required by state or local building regulations.

(11) "Local legislative body" means the council or commission charged with governing the municipality.

(12) "Municipal jurisdictional area" means the area within the limits of an incorporated municipality.

(13) "Municipality" means any incorporated city or town.

(14) "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a building.

(15) (a) "Primary function area" means an area of a building or facility in which a major activity for which the building or facility is designed is carried out. Primary function areas include but are not limited to a customer service lobby of a savings institution, a cafeteria dining area, and meeting rooms of a conference center.

(b) Areas that are not primary function areas include but are not limited to boiler rooms, storage rooms, employee lounges, janitorial closets, entrances, corridors, and restrooms.

(16) "Public building" means a building or facility owned or operated by a governmental entity or a private sector building or facility that is open to members of the public.

(17) "Public sidewalk" means a sidewalk located in a public right-of-way.

(18) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own mode of power or is mounted on or towed by another vehicle, including but not limited to a:

- (a) travel trailer;
- (b) camping trailer;
- (c) truck camper; or
- (d) motor home.

(19) "Site" means a parcel of land bounded by property lines or a designated portion of a public right-of-way.

(20) "State agency" means any state officer, department, board, bureau, commission, or other agency of this state.

(21) "State building code" means the state building code provided for in 50-60-203 or any portion of the code of limited application and any of its modifications or amendments."

Section 3. Section 50-60-310, MCA, is amended to read:

"50-60-310. Designation of county jurisdictional area for county building code. ~~(1)~~ To designate a county jurisdictional area for a county building code, the board of county commissioners:

~~(a)~~(1) shall pass a resolution of intent to adopt the county jurisdictional area;

~~(b)~~(2) shall give notice to the public as provided in 7-1-2121. The notice must state:

~~(i)~~(a) the time and place of the public hearing;

~~(ii)~~(b) the boundaries of the proposed county jurisdictional area;

~~(iii)~~(c) the procedures and deadlines for filing a written protest; and

~~(iv)~~(d) that a map and description of the boundaries of the proposed county jurisdictional area and the names and addresses of the owners of real property in the proposed county jurisdictional area are on file for public inspection at the office of the county clerk and recorder.

~~(e)~~(3) shall hold a public hearing no earlier than 30 days or later than 90 days after passage of the resolution of intent;

~~(f)~~(4) at the public hearing:

~~(i)~~(a) shall accept written protests from owners of real property in the proposed county jurisdictional area; and

~~(ii)~~(b) must receive general protests and comments relating to the designation of the boundaries of the proposed county jurisdictional area; and

~~(e)~~(5) ~~subject to subsection (2), shall~~ may adopt the county jurisdictional area, effective 60 days after passage of the resolution of the code enforcement program as approved by the department.

~~(2) If a written protest is submitted by owners of real property in the proposed county jurisdictional area representing more than 10% of the owners of real property in the proposed area, the board of county commissioners may not adopt the county jurisdictional area for a county building code without submitting to an election, as provided in 50-60-312, the question of adoption of the code enforcement program as approved by the department of labor and industry."~~

Section 4. Section 50-60-311, MCA, is amended to read:

"50-60-311. Approval by department of labor and industry of code enforcement program. After completion of the public hearing required by 50-60-310 and receipt of any written protests within the time period provided by the notice required in that section, the board of county commissioners may submit a proposed code enforcement program for that jurisdictional area to the department of labor and industry for approval. The department shall approve the program if it satisfies the criteria provided in 50-60-302. Upon approval by the department of the proposed code enforcement program, the board of county commissioners shall file with the county clerk and recorder a copy of the approved program and a ~~map showing~~ description of the county jurisdictional area ~~as designated by the county commission.~~"

NEW SECTION. **Section 5. Repealer.** Sections 50-60-312, 50-60-313, and 50-60-314, MCA, are repealed.

NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 7. Retroactive applicability.** [Section 5] applies retroactively, within the meaning of 1-2-109, to May 1, 2001.

- END -

HOUSE BILL NO. 640
INTRODUCED BY HAINES, WANZENRIED

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LOCAL GOVERNMENT BUILDING CODE AUTHORITY; ELIMINATING THE ABILITY OF A COUNTY TO DESIGNATE A PORTION OF A COUNTY OUTSIDE OF A MUNICIPALITY AS THE COUNTY JURISDICTIONAL AREA; ELIMINATING ELECTION REQUIREMENTS RELATED TO BUILDING CODES; AMENDING SECTIONS 13-19-106, 50-60-101, 50-60-310, AND 50-60-311, MCA; REPEALING SECTIONS 50-60-312, 50-60-313, AND 50-60-314, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 13-19-106, MCA, is amended to read:

"13-19-106. General requirements for mail ballot election --exception for county building code jurisdiction election. A mail ballot election must be conducted substantially as follows:

(1) Official ballots must be prepared and all other initial procedures followed as otherwise provided by law, except that mail ballots are not required to have stubs.

(2) ~~(a) Except as provided in subsection (2)(b), an~~ An official ballot must be mailed to every qualified elector of the political subdivision conducting the election.

~~(b) In an election to determine whether to adopt a building code enforcement program within a county jurisdictional area, as defined in 50-60-101 and designated by a board of county commissioners pursuant to 50-60-310, an official ballot must be mailed to every record owner of real property in the county jurisdictional area.~~

(3) Each return/verification envelope must contain a form prescribed by the secretary of state for the elector to verify the accuracy of the elector's address or notify the election administrator of the elector's correct mailing address and to return the corrected address with the voted ballot in the manner provided by 13-19-306.

(4) The elector shall mark the ballot at home and place it in a secrecy envelope.

(5) The elector shall then place the secrecy envelope containing the elector's ballot in a return/verification envelope and shall return it by mailing it or delivering it in person to a place of deposit designated by the election administrator so that it is received before a specified time on election day.

(6) Once returned, election officials shall first qualify the submitted ballot by examining the return/verification envelope to determine whether it is submitted by a qualified elector who has not previously

voted.

(7) If the ballot qualifies and is otherwise valid, officials shall then open the return/verification envelope and remove the secrecy envelope, which is then voted by depositing it unopened in an official ballot box.

(8) After the close of polls on election day, voted ballots must be counted and canvassed as otherwise provided by law."

Section 2. Section 50-60-101, MCA, is amended to read:

"50-60-101. Definitions. As used in parts 1 through 4 and 7 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Alteration" means any change, addition, or modification in construction or occupancy.

(2) "Building" means a combination of any materials, whether mobile, portable, or fixed, to form a structure and the related facilities for the use or occupancy by persons or property. The term must be construed as though followed by the words "or part or parts of a building".

(3) (a) "Building regulations" means any law, rule, resolution, regulation, ordinance, or code, general or special, or compilation of laws, rules, resolutions, regulations, ordinances, or codes enacted or adopted by the state or any municipality, including departments, boards, bureaus, commissions, or other agencies of the state or a municipality relating to the design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings and installation of equipment in buildings.

(b) The term does not include zoning ordinances.

(4) "Code enforcement program" means the plan for enforcement of the building regulations adopted by a municipality or county and includes the local building department and the staff associated with executing any aspect of the program's purposes or functions.

(5) "Construction" means the original construction and equipment of buildings and requirements or standards relating to or affecting materials used, including provisions for safety and sanitary conditions.

(6) "County jurisdictional area" means the entire county, ~~or an area or areas within the county, designated by the board of county commissioners as subject to the county building code,~~ excluding any area that is within the limits of an incorporated municipality that has adopted a building code.

(7) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(8) "Equipment" means plumbing, heating, electrical, ventilating, air conditioning, and refrigerating equipment, elevators, dumbwaiters, escalators, and other mechanical additions or installations.

(9) (a) "Factory-built building" means a factory-assembled structure or structures equipped with the

necessary service connections but not made so as to be readily movable as a unit or units and designed to be used with a permanent foundation.

(b) The term does not include manufactured housing constructed after June 15, 1976, under the National Mobile Home Construction and Safety Standards Act of 1974, 42 U.S.C. 5401, et seq.

(10) "Local building department" means the agency or agencies of a municipality charged with the administration, supervision, or enforcement of building regulations, the approval of plans, the inspection of buildings, or the issuance of permits, licenses, certificates, and similar documents prescribed or required by state or local building regulations.

(11) "Local legislative body" means the council or commission charged with governing the municipality.

(12) "Municipal jurisdictional area" means the area within the limits of an incorporated municipality.

(13) "Municipality" means any incorporated city or town.

(14) "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a building.

(15) (a) "Primary function area" means an area of a building or facility in which a major activity for which the building or facility is designed is carried out. Primary function areas include but are not limited to a customer service lobby of a savings institution, a cafeteria dining area, and meeting rooms of a conference center.

(b) Areas that are not primary function areas include but are not limited to boiler rooms, storage rooms, employee lounges, janitorial closets, entrances, corridors, and restrooms.

(16) "Public building" means a building or facility owned or operated by a governmental entity or a private sector building or facility that is open to members of the public.

(17) "Public sidewalk" means a sidewalk located in a public right-of-way.

(18) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own mode of power or is mounted on or towed by another vehicle, including but not limited to a:

- (a) travel trailer;
- (b) camping trailer;
- (c) truck camper; or
- (d) motor home.

(19) "Site" means a parcel of land bounded by property lines or a designated portion of a public right-of-way.

(20) "State agency" means any state officer, department, board, bureau, commission, or other agency of this state.

(21) "State building code" means the state building code provided for in 50-60-203 or any portion of the code of limited application and any of its modifications or amendments."

Section 3. Section 50-60-310, MCA, is amended to read:

"50-60-310. Designation of county jurisdictional area for county building code. ~~(1)~~ To designate a county jurisdictional area for a county building code, the board of county commissioners:

~~(a)~~(1) shall pass a resolution of intent to adopt the county jurisdictional area;

~~(b)~~(2) shall give notice to the public as provided in 7-1-2121. The notice must state:

~~(i)~~(a) the time and place of the public hearing;

~~(ii)~~(b) the boundaries of the proposed county jurisdictional area;

~~(iii)~~(c) the procedures and deadlines for filing a written protest; and

~~(iv)~~(d) that a map and description of the boundaries of the proposed county jurisdictional area and the names and addresses of the owners of real property in the proposed county jurisdictional area are on file for public inspection at the office of the county clerk and recorder.

~~(e)~~(3) shall hold a public hearing no earlier than 30 days or later than 90 days after passage of the resolution of intent;

~~(f)~~(4) at the public hearing:

~~(i)~~(a) shall accept written protests from owners of real property in the proposed county jurisdictional area; and

~~(ii)~~(b) must receive general protests and comments relating to the designation of the boundaries of the proposed county jurisdictional area; and

~~(e)~~(5) ~~subject to subsection (2), shall~~ may adopt the county jurisdictional area, effective 60 days after passage of the resolution of the code enforcement program as approved by the department.

~~(2) If a written protest is submitted by owners of real property in the proposed county jurisdictional area representing more than 10% of the owners of real property in the proposed area, the board of county commissioners may not adopt the county jurisdictional area for a county building code without submitting to an election, as provided in 50-60-312, the question of adoption of the code enforcement program as approved by the department of labor and industry."~~

Section 4. Section 50-60-311, MCA, is amended to read:

"50-60-311. Approval by department of labor and industry of code enforcement program. After completion of the public hearing required by 50-60-310 and receipt of any written protests within the time period provided by the notice required in that section, the board of county commissioners may submit a proposed code enforcement program for that jurisdictional area to the department of labor and industry for approval. The department shall approve the program if it satisfies the criteria provided in 50-60-302. Upon approval by the department of the proposed code enforcement program, the board of county commissioners shall file with the county clerk and recorder a copy of the approved program and a ~~map showing~~ description of the county jurisdictional area ~~as designated by the county commission.~~"

NEW SECTION. **Section 5. Repealer.** Sections 50-60-312, 50-60-313, and 50-60-314, MCA, are repealed.

NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 7. Retroactive applicability.** [Section 5] applies retroactively, within the meaning of 1-2-109, to May 1, 2001.

- END -

HOUSE BILL NO. 640
INTRODUCED BY HAINES, WANZENRIED

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LOCAL GOVERNMENT BUILDING CODE AUTHORITY; ELIMINATING THE ABILITY OF A COUNTY TO DESIGNATE A PORTION OF A COUNTY OUTSIDE OF A ~~MUNICIPALITY~~ CITY OR TOWN AS THE COUNTY JURISDICTIONAL AREA; ELIMINATING ELECTION REQUIREMENTS RELATED TO BUILDING CODES; REVISING DEFINITIONS AND THE USE OF DEFINED TERMS; PROVIDING A TRANSITION PERIOD CONCERNING JURISDICTION; AMENDING SECTIONS 13-19-106, 50-3-103, 50-60-101, ~~50-60-310, AND 50-60-311~~, 50-60-102, 50-60-106, 50-60-107, 50-60-109, 50-60-110, 50-60-115, 50-60-118, 50-60-205, 50-60-211, 50-60-212, 50-60-213, 50-60-301, 50-60-302, 50-60-303, 50-60-404, 50-60-506, 50-60-510, 50-60-604, 50-60-605, AND 50-60-607, MCA; REPEALING SECTIONS 50-60-310, 50-60-311, 50-60-312, 50-60-313, AND 50-60-314, MCA; AND PROVIDING ~~AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE DATES~~."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 13-19-106, MCA, is amended to read:

"13-19-106. General requirements for mail ballot election --~~exception for county building code jurisdiction election~~. A mail ballot election must be conducted substantially as follows:

(1) Official ballots must be prepared and all other initial procedures followed as otherwise provided by law, except that mail ballots are not required to have stubs.

(2) ~~(a) Except as provided in subsection (2)(b), an~~ An official ballot must be mailed to every qualified elector of the political subdivision conducting the election.

~~(b) In an election to determine whether to adopt a building code enforcement program within a county jurisdictional area, as defined in 50-60-101 and designated by a board of county commissioners pursuant to 50-60-310, an official ballot must be mailed to every record owner of real property in the county jurisdictional area.~~

(3) Each return/verification envelope must contain a form prescribed by the secretary of state for the elector to verify the accuracy of the elector's address or notify the election administrator of the elector's correct mailing address and to return the corrected address with the voted ballot in the manner provided by 13-19-306.

(4) The elector shall mark the ballot at home and place it in a secrecy envelope.

(5) The elector shall then place the secrecy envelope containing the elector's ballot in a return/verification

envelope and shall return it by mailing it or delivering it in person to a place of deposit designated by the election administrator so that it is received before a specified time on election day.

(6) Once returned, election officials shall first qualify the submitted ballot by examining the return/verification envelope to determine whether it is submitted by a qualified elector who has not previously voted.

(7) If the ballot qualifies and is otherwise valid, officials shall then open the return/verification envelope and remove the secrecy envelope, which is then voted by depositing it unopened in an official ballot box.

(8) After the close of polls on election day, voted ballots must be counted and canvassed as otherwise provided by law."

SECTION 2. SECTION 50-3-103, MCA, IS AMENDED TO READ:

"50-3-103. Rules promulgated by department. (1) Rules promulgated by the department by authority of 50-3-102 must be reasonable and calculated to effect the purposes of this chapter. The rules must include but are not limited to requirements for:

(a) design, construction, installation, operation, storage, handling, maintenance, or use of structural requirements for various types of construction;

(b) building restrictions within congested districts;

(c) exit facilities from structures;

(d) fire extinguishers, fire alarm systems, and fire extinguishing systems;

(e) fire emergency drills;

(f) flue and chimney construction;

(g) heating devices;

(h) electrical wiring and equipment;

(i) air conditioning, ventilating, and other duct systems;

(j) refrigeration systems;

(k) flammable liquids;

(l) oil and gas wells;

(m) application of flammable finishes;

(n) explosives, acetylene, liquefied petroleum gas, and similar products;

(o) calcium carbide and acetylene generators;

(p) flammable motion picture film;

- (q) combustible fibers;
- (r) hazardous chemicals or materials;
- (s) rubbish;
- (t) open-flame devices;
- (u) parking of vehicles;
- (v) dust explosions;
- (w) lightning protection;
- (x) storage of smokeless powder and small arms primers; and
- (y) other special fire hazards.

(2) If rules relate to building and equipment standards covered by the state building code or a ~~municipal~~ county, city, or town building code, the rules are effective upon approval of the department of labor and industry and filing with the secretary of state.

(3) Federal or other nationally recognized standards for fire protection may be adopted in whole or in part by reference.

(4) Rules must be adopted as prescribed in the Montana Administrative Procedure Act.

(5) Rules promulgated by the department may not prevent the installation of an aboveground storage tank in a community, city, or town with a population of 1,500 or less if the tank is installed in conformance with all other applicable laws and regulations.

(6) Rules promulgated by the department may not require diked areas or heat-actuated or other shutoff devices for storage tanks containing class I or class II liquids, as defined in the uniform fire code, intended only for private use on farms and ranches.

(7) A person violating any rule made under the provisions of this part is guilty of a misdemeanor."

Section 3. Section 50-60-101, MCA, is amended to read:

"50-60-101. Definitions. As used in parts 1 through 4 and 7 of this chapter, unless the context requires otherwise, the following definitions apply:

- (1) "Alteration" means any change, addition, or modification in construction or occupancy.
- (2) "Building" means a combination of any materials, whether mobile, portable, or fixed, to form a structure and the related facilities for the use or occupancy by persons or property. The term must be construed as though followed by the words "or part or parts of a building".
- (3) (a) "Building regulations" means any law, rule, resolution, regulation, ordinance, or code, general or

special, or compilation of laws, rules, resolutions, regulations, ordinances, or codes enacted or adopted by the state or any municipality, including departments, boards, bureaus, commissions, or other agencies of the state or a municipality relating to the design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings and installation of equipment in buildings.

(b) The term does not include zoning ordinances.

(4) "CITY OR TOWN" MEANS AN INCORPORATED CITY OR TOWN AS PROVIDED FOR IN TITLE 7, CHAPTER 2, PART 41.

~~(4)~~(5) "Code enforcement program" means the plan for enforcement of the building regulations adopted by a municipality or county and includes the local building department and the staff associated with executing any aspect of the program's purposes or functions.

~~(5)~~(6) "Construction" means the original construction and equipment of buildings and requirements or standards relating to or affecting materials used, including provisions for safety and sanitary conditions.

~~—— (6) "County jurisdictional area" means the entire county, or an area or areas within the county, designated by the board of county commissioners as subject to the county building code, excluding any area that is within the limits of an incorporated municipality that has adopted a building code.~~

(7) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(8) "Equipment" means plumbing, heating, electrical, ventilating, air conditioning, and refrigerating equipment, elevators, dumbwaiters, escalators, and other mechanical additions or installations.

(9) (a) "Factory-built building" means a factory-assembled structure or structures equipped with the necessary service connections but not made so as to be readily movable as a unit or units and designed to be used with a permanent foundation.

(b) The term does not include manufactured housing constructed after June 15, 1976, under the National Mobile Home Construction and Safety Standards Act of 1974, 42 U.S.C. 5401, et seq.

(10) "Local building department" means the agency or agencies of a ~~municipality~~ COUNTY, CITY, OR TOWN charged with the administration, supervision, or enforcement of building regulations, the approval of plans, the inspection of buildings, or the issuance of permits, licenses, certificates, and similar documents prescribed or required by state or local building regulations.

(11) "Local legislative body" means the council or commission charged with governing the ~~municipality~~ COUNTY, CITY, OR TOWN.

~~—— (12) "Municipal jurisdictional area" means the area within the limits of an incorporated municipality.~~

~~—— (13) "Municipality" means any incorporated city or town.~~

~~(14)~~(12) "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a building.

~~(15)~~(13) (a) "Primary function area" means an area of a building or facility in which a major activity for which the building or facility is designed is carried out. Primary function areas include but are not limited to a customer service lobby of a savings institution, a cafeteria dining area, and meeting rooms of a conference center.

(b) Areas that are not primary function areas include but are not limited to boiler rooms, storage rooms, employee lounges, janitorial closets, entrances, corridors, and restrooms.

~~(16)~~(14) "Public building" means a building or facility owned or operated by a governmental entity or a private sector building or facility that is open to members of the public.

~~(17)~~(15) "Public sidewalk" means a sidewalk located in a public right-of-way.

~~(18)~~(16) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own mode of power or is mounted on or towed by another vehicle, including but not limited to a:

- (a) travel trailer;
- (b) camping trailer;
- (c) truck camper; or
- (d) motor home.

~~(19)~~(17) "Site" means a parcel of land bounded by property lines or a designated portion of a public right-of-way.

~~(20)~~(18) "State agency" means any state officer, department, board, bureau, commission, or other agency of this state.

~~(21)~~(19) "State building code" means the state building code provided for in 50-60-203 or any portion of the code of limited application and any of its modifications or amendments."

~~Section 3. Section 50-60-310, MCA, is amended to read:~~

~~"50-60-310. Designation of county jurisdictional area for county building code. (1) To designate a county jurisdictional area for a county building code, the board of county commissioners:~~

~~(a)(1) shall pass a resolution of intent to adopt the county jurisdictional area;~~

~~(b)(2) shall give notice to the public as provided in 7-1-2121. The notice must state:~~

~~—— (i)(a) the time and place of the public hearing;~~
~~—— (ii)(b) the boundaries of the proposed county jurisdictional area;~~
~~—— (iii)(c) the procedures and deadlines for filing a written protest; and~~
~~—— (iv)(d) that a map and description of the boundaries of the proposed county jurisdictional area and the names and addresses of the owners of real property in the proposed county jurisdictional area are on file for public inspection at the office of the county clerk and recorder.~~
~~—— (c)(3) shall hold a public hearing no earlier than 30 days or later than 90 days after passage of the resolution of intent;~~
~~—— (d)(4) at the public hearing:~~
~~—— (i)(a) shall accept written protests from owners of real property in the proposed county jurisdictional area;~~
~~and~~
~~—— (ii)(b) must receive general protests and comments relating to the designation of the boundaries of the proposed county jurisdictional area; and~~
~~—— (e)(5) subject to subsection (2), shall may adopt the county jurisdictional area, effective 60 days after passage of the resolution of the code enforcement program as approved by the department.~~
~~—— (2) If a written protest is submitted by owners of real property in the proposed county jurisdictional area representing more than 10% of the owners of real property in the proposed area, the board of county commissioners may not adopt the county jurisdictional area for a county building code without submitting to an election, as provided in 50-60-312, the question of adoption of the code enforcement program as approved by the department of labor and industry."~~

~~—— **Section 4.** Section 50-60-311, MCA, is amended to read:~~

~~—— **"50-60-311. Approval by department of labor and industry of code enforcement program.** After completion of the public hearing required by 50-60-310 and receipt of any written protests within the time period provided by the notice required in that section, the board of county commissioners may submit a proposed code enforcement program for that jurisdictional area to the department of labor and industry for approval. The department shall approve the program if it satisfies the criteria provided in 50-60-302. Upon approval by the department of the proposed code enforcement program, the board of county commissioners shall file with the county clerk and recorder a copy of the approved program and a map showing description of the county jurisdictional area as designated by the county commission."~~

SECTION 4. SECTION 50-60-102, MCA, IS AMENDED TO READ:

"50-60-102. Applicability. (1) Except as provided in subsection (5), the state building code, as defined in 50-60-203(3), does not apply to:

(a) residential buildings containing less than five dwelling units or their attached-to structures, any farm or ranch building of any size, and any private garage or private storage structure of any size used only for the owner's own use, located within ~~the municipality's or county's jurisdictional area~~ a county, city, or town, unless the local legislative body ~~or board of county commissioners~~ by ordinance or resolution makes the state building code applicable to these structures;

(b) mines and buildings on mine property regulated under Title 82, chapter 4, and subject to inspection under the Federal Mine Safety and Health Act;

(c) petroleum refineries and pulp and paper mills, except a structure classified under chapter 7, section 701, group B, division 2, and chapter 9, section 901, group H, outside of process units, of the 1991 edition of the Uniform Building Code; or

(d) industrial process piping, vessels, and equipment and process-related structures located outside of another structure occupied on a regular basis by employees or the public.

(2) Except as provided in subsection (5), the state may not enforce the state building code under 50-60-205 for the buildings referred to in subsection (1). ~~Local governments~~ A county, city, or town that have has made the state building code applicable to the buildings referred to in subsection (1) may enforce within ~~their jurisdictional areas~~ the area of its jurisdiction the state building code as adopted by the ~~respective local government~~ county, city, or town.

(3) When good and sufficient cause exists, a written request for limitation of the state building code may be filed with the department for filing as a permanent record.

(4) The department may limit the application of any rule or portion of the state building code to include or exclude:

(a) specified classes or types of buildings according to use or other distinctions as may make differentiation or separate classification or regulation necessary, proper, or desirable;

(b) specified areas of the state based on size, population density, special conditions prevailing in the area, or other factors that make differentiation or separate classification or regulation necessary, proper, or desirable.

(5) (a) For purposes of promoting the energy efficiency of home design and operation, the provisions of the state building code relating to energy conservation adopted pursuant to 50-60-203(1) apply to residential

buildings, except:

(i) farm and ranch buildings; and

(ii) any private garage or private storage structure attached to a residential building and used only for the owner's own use.

(b) The provisions of the state building code relating to energy conservation in residential buildings are enforceable:

(i) by the department only for those residential buildings containing five or more dwelling units or otherwise subject to the state building code; and

(ii) through the builder self-certification program provided for in 50-60-802 for those residential buildings containing less than five dwelling units and not otherwise subject to the state building code."

SECTION 5. SECTION 50-60-106, MCA, IS AMENDED TO READ:

"50-60-106. Powers and duties of ~~municipalities~~ counties, cities, and towns. (1) The examination, approval, or disapproval of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and similar documents, the inspection of buildings, and the administration and enforcement of building regulations within the ~~municipal jurisdictional area~~ limits of a city or town are the responsibility of the ~~municipalities~~ city or town of the state. The examination, approval, or disapproval of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and similar documents, the inspection of buildings, and the administration and enforcement of building regulations within the portion of a county that is covered by a county building code are the responsibility of the county.

(2) Each ~~municipality or county~~ city, or town certified under 50-60-302 shall, within its jurisdictional area:

(a) examine, approve, or disapprove plans and specifications for the construction of any building, the construction of which is pursuant or purports to be pursuant to the applicable provisions of the state building code or ~~municipal~~ county, city, or town building code, and direct the inspection of the buildings during and in the course of construction;

(b) require that construction of buildings be in accordance with the applicable provisions of the state building code or ~~municipal~~ county, city, or town building code, subject to the powers of variance or modification granted to the department;

(c) make available to building contractors at a price that is commensurate with reproduction costs a checklist devised by the department pursuant to 50-60-118 for single-family dwellings and provide to contractors who attach a completed checklist to the plans submitted for examination the relevant building permit or notice

of plan disapproval within 10 working days of the contractor's submission;

(d) during and in the course of construction, order in writing the remedying of any condition found to exist in, on, or about any building that is being constructed in violation of the ~~applicable state~~ building code or ~~municipal county, city, or town~~ building code. Orders may be served upon the owner or the owner's authorized agent personally or by sending by certified mail a copy of the order to the owner or the owner's authorized agent at the address set forth in the application for permission for the construction of the building. A local building department, by action of an authorized officer, may grant in writing time as may be reasonably necessary for achieving compliance with the order. For the purposes of this subsection (2)(d), the phrase "during and in the course of construction" refers to the construction of a building until all necessary building permits have been obtained and the municipality or county has issued formal written approvals or has issued a certificate of occupancy for the building.

(e) issue certificates of occupancy as provided in 50-60-107;

(f) issue permits, licenses, and other required documents in connection with the construction of a building;

(g) ensure that all construction-related fees or charges imposed and collected by the municipality or county are necessary, reasonable, and uniform and are:

(i) except as provided in subsection (2)(g)(iii), used only for building code enforcement, which consists of those necessary and reasonable costs directly and specifically identifiable for the enforcement of building codes, plus indirect costs charged on the same basis as other local government proprietary funds not paying administrative charges as direct charges. If indirect costs are waived for any local government proprietary fund, they must also be waived for the program established in this section. Indirect charges are limited to the charges that are allowed under federal cost accounting principles that are applicable to a local government.

(ii) reduced if the amount of the fees or charges accumulates above the amount needed to enforce building codes for 12 months. The excess must be placed in a reserve account and may only be used for building code enforcement. Collection and expenditure of fees and charges must be fully documented.

(iii) allocated and remitted to the department, in an amount not to exceed 0.5% of the building fees or charges collected, for the building codes education program established in 50-60-116.

(3) Each ~~municipality or county~~ county, city, or town with a building code enforcement program that has been certified under 50-60-302 may, within ~~its jurisdiction~~ the area of its jurisdiction:

(a) make, amend, and repeal rules for the administration and enforcement of the provisions of this section and for the collection of fees and charges related to construction;

(b) prohibit the commencement of construction until a permit has been issued by the local building department after a showing of compliance with the requirements of the applicable provisions of the state building code or ~~municipal~~ county, city, or town building code; and

(c) enter into a private contract with the owner or builder of a building that is not or will not be within the jurisdiction of the ~~municipality or~~ county, city, or town under which the ~~municipality or~~ county, city, or town will provide reviews, inspections, orders, and certificates of occupancy for a fee and under conditions agreed upon by the parties. ~~Municipal or county~~ County, city, or town powers of enforcement may not be exercised."

SECTION 6. SECTION 50-60-107, MCA, IS AMENDED TO READ:

"50-60-107. Certificate of occupancy. (1) A certificate of occupancy for a building constructed in accordance with the provisions of the state building code or ~~municipal~~ county, city, or town building code ~~shall~~ must certify that the building conforms to the requirements of the building regulations applicable to it.

(2) Every certificate of occupancy, unless and until set aside or vacated by a court of competent jurisdiction, is binding and conclusive upon all ~~municipal~~ county, city, or town agencies as to all matters set forth, and ~~no an~~ order, directive, or requirement at variance ~~therewith~~ with the certificate of occupancy may not be made or issued by any other state agency or ~~municipal~~ county, city, or town agency."

SECTION 7. SECTION 50-60-109, MCA, IS AMENDED TO READ:

"50-60-109. Injunctions authorized. (1) The construction or use of the building in violation of any provision of the state building code or ~~municipal~~ county, city, or town building code or any lawful order of a state building official or a local building department may be enjoined by a judge of the district court in the judicial district in which the building is located.

(2) This section ~~will be~~ is governed by the Montana Rules of Civil Procedure."

SECTION 8. SECTION 50-60-110, MCA, IS AMENDED TO READ:

"50-60-110. Violation a misdemeanor. Any person served with an order pursuant to the provisions of parts 1 through 4 who fails to comply with the order not later than 30 days after service or within the time fixed by the department or a local building department for compliance, whichever is the greater, or any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent, their agents, or any person taking part or assisting in the construction or use of any building who knowingly violates any of the applicable provisions of the state building code or ~~a municipal~~ county, city, or town building code is guilty of a misdemeanor."

SECTION 9. SECTION 50-60-115, MCA, IS AMENDED TO READ:

"50-60-115. Building codes council -- purpose and structure. (1) There is a building codes council for the purpose of assisting the department with the application, implementation, and interpretation of the state building code and building codes adopted by ~~local governments~~ counties, cities, or towns. The council shall work cooperatively with the department and with representatives of the construction industry, as well as members of the interested public, to harmonize building codes and related rules with both the needs of the construction industry and the public interest in efficiency, cost-effectiveness, and safety.

(2) The council consists of 11 members appointed by the governor, unless otherwise specified, as follows:

- (a) a practicing architect licensed in Montana;
 - (b) a practicing professional engineer licensed in Montana;
 - (c) a representative from the building contractor industry;
 - (d) a ~~municipal~~ county, city, or town building inspector;
 - (e) a representative of the manufactured housing industry;
 - (f) a member of the general public who does not hold public office and who does not represent the same industry or agency as another council member;
 - (g) the director of the department of health and human services or the director's designee;
 - (h) a licensed electrician selected by the board of electricians;
 - (i) a licensed plumber selected by the board of plumbers;
 - (j) the state fire marshal or the fire marshal's designee; and
 - (k) a representative of the home building industry.
- (3) The appointed council members serve at the pleasure of the governor for terms of 3 years.
- (4) The council is allocated to the department for administrative purposes only as provided in 2-15-121.
- (5) The council and its members are entitled to compensation as provided in 2-15-122."

SECTION 10. SECTION 50-60-118, MCA, IS AMENDED TO READ:

"50-60-118. Examination of single-family dwelling plans -- statewide approval for model plans -- fee adjustments -- mandatory checklist. (1) The department shall accept for examination and approval or disapproval all model construction plans for single-family dwellings submitted to the department.

(2) Once a model construction plan has been approved, the department shall indicate in writing on the approved plan that the plan is acceptable on a statewide basis and that no further examination is warranted

except with respect to:

- (a) zoning;
- (b) footings, foundations, and basements;
- (c) curbs;
- (d) gutters;
- (e) landscaping;
- (f) utility connections;
- (g) street requirements;
- (h) sidewalks; and
- (i) other requirements specifically related to the exterior of the building.

(3) Local building departments shall reduce plan examination fees commensurate with the reduced time and effort expended resulting from the department's examination provided for in subsection (1).

(4) This section may not be construed to reduce the requirements for obtaining permits for onsite inspection of the residence under construction pursuant to 50-60-106.

(5) (a) The department shall devise a checklist for the examination of single-family dwelling construction plans by the department and by the building code enforcement officials of ~~municipalities and counties~~, cities, and towns.

(b) The checklist must be based upon the most recently adopted edition of the council of American building officials One and Two Family Dwelling Code, as amended.

(c) The checklist is subject to review and amendment by the building codes council provided for in 50-60-115.

(d) The checklist must be made available to building contractors at a price that is commensurate with reproduction costs, and a building contractor who uses the checklist and attaches it to the plans that the contractor submits to the department or a ~~municipality or county~~, city, or town for examination is entitled to receive the relevant building permit or notice of disapproval within 10 days of submission of the completed checklist."

SECTION 11. SECTION 50-60-205, MCA, IS AMENDED TO READ:

"50-60-205. When state building code applies -- health care facility and public health center doors.

(1) If a ~~municipality or county~~, city, or town does not adopt a building code as provided in 50-60-301, the state building code applies within the ~~municipal or county~~, city, or town jurisdictional area and the state will enforce the code in these areas.

(2) Any provision of a building code requiring the installation or maintenance of self-closing or automatic closing corridor doors to patient rooms does not apply to health care facilities as defined in 50-5-101 or to a public health center as defined in 7-34-2102."

SECTION 12. SECTION 50-60-211, MCA, IS AMENDED TO READ:

"50-60-211. Inspections. (1) The construction of a public building or alteration to a primary function area of a public building must be inspected for physical accessibility to persons with disabilities.

(2) The inspection must include the building site, including applicable exterior features, such as parking areas, passenger loading zones, private sidewalks, and the accessibility from adjacent public sidewalks, public streets, and public transportation stops.

(3) (a) The inspections must be completed by state building inspectors in areas not covered by a ~~municipal or county, city, or town~~ building code.

(b) (i) ~~Municipalities and counties~~ Counties, cities, and towns that have adopted a building code may assign appropriately trained personnel to perform site inspections conducted pursuant to this part.

(ii) ~~Municipalities and counties~~ Counties, cities, and towns conducting inspections pursuant to this section must have an enforcement mechanism in place to ensure compliance with the accessibility provisions of this part, including but not limited to denying building permits or certificates of occupancy, injunctions, or other civil enforcement procedures allowed by law.

(4) Existing public buildings that are not undergoing an alteration to a primary function area are not subject to the inspection provisions of this section."

SECTION 13. SECTION 50-60-212, MCA, IS AMENDED TO READ:

"50-60-212. Disclaimer. A building permit or certificate of occupancy issued by the state or by a ~~municipality or county, city, or town~~ must contain a statement that reads: "Compliance with the requirements of the state building code for physical accessibility to persons with disabilities does not necessarily guarantee compliance with the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, the Fair Housing Amendments Act of 1988, Title 49, chapter 2, commonly known as the Montana Human Rights Act, or other similar federal, state, or local laws that mandate accessibility to commercial construction or multifamily housing.""

SECTION 14. SECTION 50-60-213, MCA, IS AMENDED TO READ:

"50-60-213. Accessible exterior routes -- exceptions. (1) Except as provided in subsection (6), for

a public building, an accessible exterior route must be provided from public transportation stops located within the boundary of the building site, from accessible parking and accessible passenger loading zones within the boundaries of the building site, and from public sidewalks that are immediately adjacent to the building site, if sidewalks exist, to the building's accessible entrance served by the transportation stops, parking and loading zones, or sidewalks.

(2) (a) When more than one public building is located on a site, at least one accessible exterior route must connect accessible elements, facilities, and buildings that are on the site.

(b) For the purposes of 50-60-214 and this section, "element" means an architectural or mechanical component of a public building, facility, space, or site and includes but is not limited to telephones, curb ramps, doors, drinking fountains, seating, and water closets.

(3) An accessible exterior route between accessible public parking and an accessible building entrance must be the most practical direct route.

(4) (a) A person or entity constructing a public building is not required to fully comply with the provisions of this section if the person can demonstrate that due to characteristics of the terrain, it is structurally impractical to fully comply.

(b) Full compliance may be considered structurally impractical only in those rare circumstances when the unique characteristics of the terrain prevent the incorporation of accessibility features.

(c) The person or entity shall comply with the provisions of this section to the extent that compliance is not structurally impractical.

(d) The department shall adopt rules to assist all interested parties involved in the design, construction, and inspection processes in determining structural impracticality.

(5) (a) If a paved parking lot is not planned or present for a public building, a person or entity constructing the public building is not required to pave the entire lot, unless otherwise required by law, ordinance, or applicable building code, but shall provide pavement or a similarly firm, stable, and slip-resistant surface for parking spaces designated for persons with disabilities.

(b) An accessible exterior route with a suitably firm, stable, and slip-resistant surface must be provided from the designated parking spaces to an accessible building or facility entrance.

(c) The total number of designated accessible parking spaces in a parking lot or area must be the number provided for in the applicable state building code or ~~local government~~ county, city, or town building code.

(6) An accessible route is not required in cases where there is not a pedestrian route for the general public.

(7) The state, ~~municipalities, and counties,~~ cities, and towns shall use the same accessibility standards."

SECTION 15. SECTION 50-60-301, MCA, IS AMENDED TO READ:

"50-60-301. ~~Municipal and county~~ County, city, and town building codes authorized -- health care facility and public health center doors -- fee adjustment for model plans. (1) The local legislative body of a ~~municipality or county,~~ city, or town may adopt a building code to apply to the ~~municipal or county,~~ city, or town ~~jurisdictional area~~ by an ordinance or resolution, as appropriate:

(a) adopting a building code; or

(b) authorizing the adoption of a building code by administrative action.

(2) A ~~municipal or county,~~ city, or town building code may include only codes adopted by the department.

(3) Any provision of a building code requiring the installation or maintenance of self-closing or automatic closing corridor doors to patient rooms does not apply to health care facilities, as defined in 50-5-101, or to a public health center, as defined in 7-34-2102.

(4) (a) When the same single-family dwelling plan is constructed at more than one site, the ~~municipality or county,~~ city, or town shall, after the first examination of the plan, adjust the required plan fee to reflect only the cost of reviewing requirements pertaining to the review of:

(i) zoning;

(ii) footings, foundations, and basements;

(iii) curbs;

(iv) gutters;

(v) landscaping;

(vi) utility connections;

(vii) street requirements;

(viii) sidewalks; and

(ix) other requirements related specifically to the exterior of the building.

(b) If a building contractor alters the single-family dwelling plan referred to in subsection (4)(a) in a fashion that substantially affects the building code requirements, the ~~municipality or county,~~ city, or town may impose the full examination fee permitted under 50-60-106."

SECTION 16. SECTION 50-60-302, MCA, IS AMENDED TO READ:

"50-60-302. Certification of ~~municipal and county,~~ city, or town building codes. (1) A county, ~~or~~

~~municipality~~ city, or town may not enforce a building code unless:

(a) the code enforcement program has been certified by the department as in compliance with applicable statutes and department certification rules;

(b) the current adopted code, a current list of fees to be imposed, and a current plan for enforcement of the code have been filed with and approved by the department; and

(c) all inspectors inspecting or approving any installations, which if accomplished commercially require state licensure, must themselves be properly and currently state-licensed as journeymen in that craft or occupation or be certified by a nationally recognized entity for testing and certification of inspectors that is approved by the department before being permitted to inspect or approve any installations.

(2) The department shall adopt additional rules and standards governing the certification of ~~municipal and county~~, city, and town building code enforcement programs that must include provisions for prompt revocation of certification for refusal or failure to comply with any applicable statute or rule. The department may allow a county, ~~or municipality~~ city, or town a reasonable amount of time, not to exceed 6 months, to correct identified code enforcement program deficiencies, unless the deficiencies constitute an immediate threat to the public health, safety, or welfare, in which case the department may require immediate correction. Failure to correct deficiencies within the time set by the department constitutes a basis for immediate decertification of the code enforcement program. Continued operation of a county, ~~or municipal~~ city, or town code enforcement program in violation of a department order to correct deficiencies may be enjoined or subject to a writ of mandamus by a judge of the district court in the jurisdiction in which the county, ~~or municipality~~ city, or town is located. The rules and standards must include provisions for the department to ensure that all code enforcement program functions are being properly performed.

(3) If the certification of any local government code enforcement program is revoked for any violation or deficiency, the state resumes its original jurisdiction for state building code enforcement within the ~~municipal or county~~, city, or town area and the local government retains the responsibility for completion of inspections and issuance of certificates of occupancy on any incomplete construction projects previously permitted by the ~~local government~~ county, city, or town, unless the reason for the decertification is directly related to the protection of health, safety, and welfare of the public.

(4) If a ~~local government~~ county, city, or town voluntarily decertifies its code enforcement program, the department must be given written notification of the intended decertification at least 90 days prior to the date of decertification. The ~~local government~~ county, city, or town retains the responsibility for completion of inspections and issuance of certificates of occupancy on any incomplete construction projects permitted by the ~~local~~

~~government~~ county, city, or town prior to decertifying its code enforcement program."

SECTION 17. SECTION 50-60-303, MCA, IS AMENDED TO READ:

"50-60-303. ~~Municipal and county~~ County, city, or town appeal procedure. (1) If a ~~municipality or~~ county, city, or town adopts a building code, it shall also establish an appeal procedure by ordinance or resolution, as appropriate, that is acceptable to the department.

(2) If a ~~municipality or~~ county, city, or town does not adopt a code, appeals on the application of the state building code within the ~~municipal or~~ county, city, or town jurisdictional area must be made to the department."

SECTION 18. SECTION 50-60-404, MCA, IS AMENDED TO READ:

"50-60-404. Enforcement of building construction standards for modular homes. (1) The provisions of this chapter apply to factory-built modular or prebuilt homes or buildings.

(2) A ~~municipality~~ county, city, or town may regulate the construction of factory-built modular or prebuilt homes or buildings as provided in 50-60-106 if:

- (a) the homes or buildings are constructed inside the jurisdiction of the ~~municipality~~ county, city, or town;
- (b) the homes or buildings are sold primarily to persons in the county in which the factory is located;
- (c) the factory does not manufacture more than 100 homes or buildings a year; and
- (d) the ~~municipality~~ county, city, or town has an agency or officer assigned to inspect and enforce building construction standards.

(3) Inspection and enforcement approval given by a ~~municipality~~ county, city, or town under this section may be recognized and accepted by any other ~~municipality~~ county, city, or town of the state to which the factory-built home or building is transported for final installation. Additional inspections need not be conducted."

SECTION 19. SECTION 50-60-506, MCA, IS AMENDED TO READ:

"50-60-506. Exceptions to permit requirement. (1) ~~No~~ A permit is not required for any minor replacement or repair work, the performance of which does not have a significant potential for creating a condition hazardous to public health and safety.

(2) ~~No~~ A permit is not required where the installation is exempt under the provisions of 37-69-102 or 50-60-503.

(3) ~~No~~ A state permit is required whenever the installation occurs in an area governed by a ~~municipality~~ county, city, or town and where there is in effect a ~~municipal~~ county, city, or town building code ~~which that~~ covers

plumbing installations and ~~which~~ that provides inspection procedures.

(4) ~~Nothing contained in this~~ This part shall ~~does not~~ prohibit the owner of residential property from making an installation for all sanitary plumbing and potable water supply piping without a permit ~~providing he if~~ the owner personally does the work ~~himself~~.

(5) The provisions of this part do not apply to regularly employed maintenance personnel doing maintenance work on the business premises of their employer unless the work is subject to the permit provisions of this part."

SECTION 20. SECTION 50-60-510, MCA, IS AMENDED TO READ:

"50-60-510. Inspections to ensure compliance. All plumbing and drainage systems may be inspected by the department of labor and industry or an authorized representative or by a municipality or county, city, or town certified to perform an inspection pursuant to 50-60-302 in order to ensure compliance with the requirements of the state plumbing code. As part of any inspection, the inspector shall request proof of licensure from any person who is required to be licensed who is involved with or, in the inspector's judgment, appears to be involved with plumbing activities if the person is on the site. The inspector shall report any instance of license violation to the inspector's employing agency, and the employing agency shall in turn report the violation to the board of plumbers."

SECTION 21. SECTION 50-60-604, MCA, IS AMENDED TO READ:

"50-60-604. Inspections -- electrical permits -- fees. The department of labor and industry or an authorized representative or a ~~municipality or county, city, or town~~ certified to perform an inspection pursuant to 50-60-302 shall inspect electrical installations, issue electrical permits for these installations, and establish and charge a reasonable and uniform fee for the inspections. The fee must be commensurate with the expense of providing the inspection and with appropriations for other purposes. As part of any inspection, the inspector shall require proof of licensure from any person who is required to be licensed who is involved with or, in the inspector's judgment, appears to be involved with electrical installations if the person is on the site. The inspector shall report any instance of license violation to the inspector's employing agency, and the employing agency shall in turn report the violation to the board of electricians."

SECTION 22. SECTION 50-60-605, MCA, IS AMENDED TO READ:

"50-60-605. Power supplier not to energize installation without electrical permit. Individuals, firms,

cooperatives, corporations, or municipalities selling electricity are power suppliers. Except for temporary connections that the department of labor and industry may authorize by rule for a period not exceeding 14 days without a preconnection inspection, power suppliers may not connect with or energize an electrical installation under this part unless the owner or a licensed electrical contractor has delivered to the power supplier an electrical permit covering the installation, issued by the department of labor and industry or a ~~municipality or~~ county, city, or town certified to enforce the electrical code pursuant to 50-60-302."

SECTION 23. SECTION 50-60-607, MCA, IS AMENDED TO READ:

"50-60-607. Energizing electrical installation without permit -- misdemeanor. Any person, partnership, company, firm, association, or corporation, other than a power supplier, that energizes an electrical installation under this part for which an electrical permit has not been issued by the department of labor and industry or a ~~municipality or~~ county, city, or town certified to enforce the electrical code pursuant to 50-60-302 is guilty of a misdemeanor."

NEW SECTION. SECTION 24. AREA OF APPLICABILITY OF COUNTY, CITY, OR TOWN BUILDING CODE -- ENFORCEMENT. (1) A CITY OR TOWN THAT ADOPTS A BUILDING CODE UNDER THIS CHAPTER MAY ENFORCE ITS BUILDING CODE ONLY WITHIN THE INCORPORATED LIMITS OF THE CITY OR TOWN.

(2) A COUNTY MAY ADOPT A BUILDING CODE UNDER THIS CHAPTER ON A COUNTYWIDE BASIS UNLESS A CITY OR TOWN WITHIN THE COUNTY HAS ADOPTED A BUILDING CODE. IF A CITY OR TOWN WITHIN THE COUNTY HAS ADOPTED A BUILDING CODE, THEN THE COUNTY MAY NOT ENFORCE THE COUNTY BUILDING CODE IN THAT CITY OR TOWN.

(3) A COUNTY, CITY, OR TOWN MAY CONTRACT FOR THE ENFORCEMENT OF ITS BUILDING CODE.

NEW SECTION. SECTION 25. TRANSITION. (1) A MUNICIPALITY IS RESPONSIBLE FOR COMPLETING INSPECTIONS THAT ARE REQUIRED FOR THOSE BUILDING, ELECTRICAL, PLUMBING, AND MECHANICAL PERMITS ISSUED BY THE MUNICIPALITY IN AN EXTENDED JURISDICTIONAL AREA PRIOR TO OCTOBER 1, 2003.

(2) A PROJECT IN AN EXTENDED JURISDICTIONAL AREA THAT REQUIRED A BUILDING PERMIT PRIOR TO OCTOBER 1, 2003, IS SUBJECT TO CITY OR TOWN JURISDICTION UNTIL THE PROJECT IS COMPLETED. A MUNICIPALITY MAY NOT APPLY ITS BUILDING CODE TO A NEW PROJECT AFTER OCTOBER 1, 2003.

(3) A COUNTY THAT HAS NOT ADOPTED A BUILDING CODE PRIOR TO [THE EFFECTIVE DATE OF THIS SECTION] MAY ADOPT A BUILDING CODE, BUT THE BUILDING CODE MAY NOT BE EFFECTIVE BEFORE OCTOBER 1, 2003.

NEW SECTION. Section 26. Repealer. Sections 50-60-310, 50-60-311, 50-60-312, 50-60-313, and 50-60-314, MCA, are repealed.

NEW SECTION. SECTION 27. CODIFICATION INSTRUCTION. [SECTION 24] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 50, CHAPTER 60, PART 3, AND THE PROVISIONS OF TITLE 50, CHAPTER 60, PART 3, APPLY TO [SECTION 24].

NEW SECTION. Section 28. Effective date DATES. ~~[This act] is~~ (1) EXCEPT AS PROVIDED IN SUBSECTION (2), [THIS ACT] IS EFFECTIVE OCTOBER 1, 2003.

(2) [SECTION 25 AND THIS SECTION] ARE effective on passage and approval.

~~NEW SECTION. Section 7. Retroactive applicability. [Section 5] applies retroactively, within the meaning of 1-2-109, to May 1, 2001.~~

- END -

HOUSE BILL NO. 640
INTRODUCED BY HAINES, WANZENRIED

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LOCAL GOVERNMENT BUILDING CODE AUTHORITY; ELIMINATING THE ABILITY OF A COUNTY TO DESIGNATE A PORTION OF A COUNTY OUTSIDE OF A ~~MUNICIPALITY~~ CITY OR TOWN AS THE COUNTY JURISDICTIONAL AREA; ELIMINATING ELECTION REQUIREMENTS RELATED TO BUILDING CODES; REVISING DEFINITIONS AND THE USE OF DEFINED TERMS; PROVIDING A TRANSITION PERIOD CONCERNING JURISDICTION; AMENDING SECTIONS 13-19-106, 50-3-103, 50-60-101, ~~50-60-310, AND 50-60-311~~, 50-60-102, 50-60-106, 50-60-107, 50-60-109, 50-60-110, 50-60-115, 50-60-118, 50-60-205, 50-60-211, 50-60-212, 50-60-213, 50-60-301, 50-60-302, 50-60-303, 50-60-404, 50-60-506, 50-60-510, 50-60-604, 50-60-605, AND 50-60-607, MCA; REPEALING SECTIONS 50-60-310, 50-60-311, 50-60-312, 50-60-313, AND 50-60-314, MCA; AND PROVIDING ~~AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE DATES.~~"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 13-19-106, MCA, is amended to read:

"13-19-106. General requirements for mail ballot election --~~exception for county building code jurisdiction election.~~ A mail ballot election must be conducted substantially as follows:

(1) Official ballots must be prepared and all other initial procedures followed as otherwise provided by law, except that mail ballots are not required to have stubs.

(2) ~~(a) Except as provided in subsection (2)(b), an~~ An official ballot must be mailed to every qualified elector of the political subdivision conducting the election.

~~(b) In an election to determine whether to adopt a building code enforcement program within a county jurisdictional area, as defined in 50-60-101 and designated by a board of county commissioners pursuant to 50-60-310, an official ballot must be mailed to every record owner of real property in the county jurisdictional area.~~

(3) Each return/verification envelope must contain a form prescribed by the secretary of state for the elector to verify the accuracy of the elector's address or notify the election administrator of the elector's correct mailing address and to return the corrected address with the voted ballot in the manner provided by 13-19-306.

(4) The elector shall mark the ballot at home and place it in a secrecy envelope.

(5) The elector shall then place the secrecy envelope containing the elector's ballot in a return/verification

envelope and shall return it by mailing it or delivering it in person to a place of deposit designated by the election administrator so that it is received before a specified time on election day.

(6) Once returned, election officials shall first qualify the submitted ballot by examining the return/verification envelope to determine whether it is submitted by a qualified elector who has not previously voted.

(7) If the ballot qualifies and is otherwise valid, officials shall then open the return/verification envelope and remove the secrecy envelope, which is then voted by depositing it unopened in an official ballot box.

(8) After the close of polls on election day, voted ballots must be counted and canvassed as otherwise provided by law."

SECTION 2. SECTION 50-3-103, MCA, IS AMENDED TO READ:

"50-3-103. Rules promulgated by department. (1) Rules promulgated by the department by authority of 50-3-102 must be reasonable and calculated to effect the purposes of this chapter. The rules must include but are not limited to requirements for:

(a) design, construction, installation, operation, storage, handling, maintenance, or use of structural requirements for various types of construction;

(b) building restrictions within congested districts;

(c) exit facilities from structures;

(d) fire extinguishers, fire alarm systems, and fire extinguishing systems;

(e) fire emergency drills;

(f) flue and chimney construction;

(g) heating devices;

(h) electrical wiring and equipment;

(i) air conditioning, ventilating, and other duct systems;

(j) refrigeration systems;

(k) flammable liquids;

(l) oil and gas wells;

(m) application of flammable finishes;

(n) explosives, acetylene, liquefied petroleum gas, and similar products;

(o) calcium carbide and acetylene generators;

(p) flammable motion picture film;

- (q) combustible fibers;
- (r) hazardous chemicals or materials;
- (s) rubbish;
- (t) open-flame devices;
- (u) parking of vehicles;
- (v) dust explosions;
- (w) lightning protection;
- (x) storage of smokeless powder and small arms primers; and
- (y) other special fire hazards.

(2) If rules relate to building and equipment standards covered by the state building code or a ~~municipal~~ county, city, or town building code, the rules are effective upon approval of the department of labor and industry and filing with the secretary of state.

(3) Federal or other nationally recognized standards for fire protection may be adopted in whole or in part by reference.

(4) Rules must be adopted as prescribed in the Montana Administrative Procedure Act.

(5) Rules promulgated by the department may not prevent the installation of an aboveground storage tank in a community, city, or town with a population of 1,500 or less if the tank is installed in conformance with all other applicable laws and regulations.

(6) Rules promulgated by the department may not require diked areas or heat-actuated or other shutoff devices for storage tanks containing class I or class II liquids, as defined in the uniform fire code, intended only for private use on farms and ranches.

(7) A person violating any rule made under the provisions of this part is guilty of a misdemeanor."

Section 3. Section 50-60-101, MCA, is amended to read:

"50-60-101. Definitions. As used in parts 1 through 4 and 7 of this chapter, unless the context requires otherwise, the following definitions apply:

- (1) "Alteration" means any change, addition, or modification in construction or occupancy.
- (2) "Building" means a combination of any materials, whether mobile, portable, or fixed, to form a structure and the related facilities for the use or occupancy by persons or property. The term must be construed as though followed by the words "or part or parts of a building".
- (3) (a) "Building regulations" means any law, rule, resolution, regulation, ordinance, or code, general or

special, or compilation of laws, rules, resolutions, regulations, ordinances, or codes enacted or adopted by the state or any municipality, including departments, boards, bureaus, commissions, or other agencies of the state or a municipality relating to the design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings and installation of equipment in buildings.

(b) The term does not include zoning ordinances.

(4) "CITY OR TOWN" MEANS AN INCORPORATED CITY OR TOWN AS PROVIDED FOR IN TITLE 7, CHAPTER 2, PART 41.

~~(4)~~(5) "Code enforcement program" means the plan for enforcement of the building regulations adopted by a municipality or county and includes the local building department and the staff associated with executing any aspect of the program's purposes or functions.

~~(5)~~(6) "Construction" means the original construction and equipment of buildings and requirements or standards relating to or affecting materials used, including provisions for safety and sanitary conditions.

~~—— (6) "County jurisdictional area" means the entire county, or an area or areas within the county, designated by the board of county commissioners as subject to the county building code, excluding any area that is within the limits of an incorporated municipality that has adopted a building code.~~

(7) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(8) "Equipment" means plumbing, heating, electrical, ventilating, air conditioning, and refrigerating equipment, elevators, dumbwaiters, escalators, and other mechanical additions or installations.

(9) (a) "Factory-built building" means a factory-assembled structure or structures equipped with the necessary service connections but not made so as to be readily movable as a unit or units and designed to be used with a permanent foundation.

(b) The term does not include manufactured housing constructed after June 15, 1976, under the National Mobile Home Construction and Safety Standards Act of 1974, 42 U.S.C. 5401, et seq.

(10) "Local building department" means the agency or agencies of a ~~municipality~~ COUNTY, CITY, OR TOWN charged with the administration, supervision, or enforcement of building regulations, the approval of plans, the inspection of buildings, or the issuance of permits, licenses, certificates, and similar documents prescribed or required by state or local building regulations.

(11) "Local legislative body" means the council or commission charged with governing the ~~municipality~~ COUNTY, CITY, OR TOWN.

~~—— (12) "Municipal jurisdictional area" means the area within the limits of an incorporated municipality.~~

~~—— (13) "Municipality" means any incorporated city or town.~~

~~(14)~~(12) "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a building.

~~(15)~~(13) (a) "Primary function area" means an area of a building or facility in which a major activity for which the building or facility is designed is carried out. Primary function areas include but are not limited to a customer service lobby of a savings institution, a cafeteria dining area, and meeting rooms of a conference center.

(b) Areas that are not primary function areas include but are not limited to boiler rooms, storage rooms, employee lounges, janitorial closets, entrances, corridors, and restrooms.

~~(16)~~(14) "Public building" means a building or facility owned or operated by a governmental entity or a private sector building or facility that is open to members of the public.

~~(17)~~(15) "Public sidewalk" means a sidewalk located in a public right-of-way.

~~(18)~~(16) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own mode of power or is mounted on or towed by another vehicle, including but not limited to a:

- (a) travel trailer;
- (b) camping trailer;
- (c) truck camper; or
- (d) motor home.

~~(19)~~(17) "Site" means a parcel of land bounded by property lines or a designated portion of a public right-of-way.

~~(20)~~(18) "State agency" means any state officer, department, board, bureau, commission, or other agency of this state.

~~(21)~~(19) "State building code" means the state building code provided for in 50-60-203 or any portion of the code of limited application and any of its modifications or amendments."

~~Section 3. Section 50-60-310, MCA, is amended to read:~~

~~"50-60-310. Designation of county jurisdictional area for county building code. (1) To designate a county jurisdictional area for a county building code, the board of county commissioners:~~

~~(a)(1) shall pass a resolution of intent to adopt the county jurisdictional area;~~

~~(b)(2) shall give notice to the public as provided in 7-1-2121. The notice must state:~~

~~—— (i)(a) the time and place of the public hearing;~~
~~—— (ii)(b) the boundaries of the proposed county jurisdictional area;~~
~~—— (iii)(c) the procedures and deadlines for filing a written protest; and~~
~~—— (iv)(d) that a map and description of the boundaries of the proposed county jurisdictional area and the names and addresses of the owners of real property in the proposed county jurisdictional area are on file for public inspection at the office of the county clerk and recorder.~~
~~—— (c)(3) shall hold a public hearing no earlier than 30 days or later than 90 days after passage of the resolution of intent;~~
~~—— (d)(4) at the public hearing:~~
~~—— (i)(a) shall accept written protests from owners of real property in the proposed county jurisdictional area;~~
~~and~~
~~—— (ii)(b) must receive general protests and comments relating to the designation of the boundaries of the proposed county jurisdictional area; and~~
~~—— (e)(5) subject to subsection (2), shall may adopt the county jurisdictional area, effective 60 days after passage of the resolution of the code enforcement program as approved by the department.~~
~~—— (2) If a written protest is submitted by owners of real property in the proposed county jurisdictional area representing more than 10% of the owners of real property in the proposed area, the board of county commissioners may not adopt the county jurisdictional area for a county building code without submitting to an election, as provided in 50-60-312, the question of adoption of the code enforcement program as approved by the department of labor and industry."~~

~~—— **Section 4.** Section 50-60-311, MCA, is amended to read:~~

~~—— **"50-60-311. Approval by department of labor and industry of code enforcement program.** After completion of the public hearing required by 50-60-310 and receipt of any written protests within the time period provided by the notice required in that section, the board of county commissioners may submit a proposed code enforcement program for that jurisdictional area to the department of labor and industry for approval. The department shall approve the program if it satisfies the criteria provided in 50-60-302. Upon approval by the department of the proposed code enforcement program, the board of county commissioners shall file with the county clerk and recorder a copy of the approved program and a map showing description of the county jurisdictional area as designated by the county commission."~~

SECTION 4. SECTION 50-60-102, MCA, IS AMENDED TO READ:

"50-60-102. Applicability. (1) Except as provided in subsection (5), the state building code, as defined in 50-60-203(3), does not apply to:

(a) residential buildings containing less than five dwelling units or their attached-to structures, any farm or ranch building of any size, and any private garage or private storage structure of any size used only for the owner's own use, located within ~~the municipality's or county's jurisdictional area~~ a county, city, or town, unless the local legislative body ~~or board of county commissioners~~ by ordinance or resolution makes the state building code applicable to these structures;

(b) mines and buildings on mine property regulated under Title 82, chapter 4, and subject to inspection under the Federal Mine Safety and Health Act;

(c) petroleum refineries and pulp and paper mills, except a structure classified under chapter 7, section 701, group B, division 2, and chapter 9, section 901, group H, outside of process units, of the 1991 edition of the Uniform Building Code; or

(d) industrial process piping, vessels, and equipment and process-related structures located outside of another structure occupied on a regular basis by employees or the public.

(2) Except as provided in subsection (5), the state may not enforce the state building code under 50-60-205 for the buildings referred to in subsection (1). ~~Local governments~~ A county, city, or town that have has made the state building code applicable to the buildings referred to in subsection (1) may enforce within ~~their jurisdictional areas~~ the area of its jurisdiction the state building code as adopted by the ~~respective local government~~ county, city, or town.

(3) When good and sufficient cause exists, a written request for limitation of the state building code may be filed with the department for filing as a permanent record.

(4) The department may limit the application of any rule or portion of the state building code to include or exclude:

(a) specified classes or types of buildings according to use or other distinctions as may make differentiation or separate classification or regulation necessary, proper, or desirable;

(b) specified areas of the state based on size, population density, special conditions prevailing in the area, or other factors that make differentiation or separate classification or regulation necessary, proper, or desirable.

(5) (a) For purposes of promoting the energy efficiency of home design and operation, the provisions of the state building code relating to energy conservation adopted pursuant to 50-60-203(1) apply to residential

buildings, except:

(i) farm and ranch buildings; and

(ii) any private garage or private storage structure attached to a residential building and used only for the owner's own use.

(b) The provisions of the state building code relating to energy conservation in residential buildings are enforceable:

(i) by the department only for those residential buildings containing five or more dwelling units or otherwise subject to the state building code; and

(ii) through the builder self-certification program provided for in 50-60-802 for those residential buildings containing less than five dwelling units and not otherwise subject to the state building code."

SECTION 5. SECTION 50-60-106, MCA, IS AMENDED TO READ:

"50-60-106. Powers and duties of ~~municipalities~~ counties, cities, and towns. (1) The examination, approval, or disapproval of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and similar documents, the inspection of buildings, and the administration and enforcement of building regulations within the ~~municipal jurisdictional area~~ limits of a city or town are the responsibility of the ~~municipalities~~ city or town of the state. The examination, approval, or disapproval of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and similar documents, the inspection of buildings, and the administration and enforcement of building regulations within the portion of a county that is covered by a county building code are the responsibility of the county.

(2) Each ~~municipality or county~~ city, or town certified under 50-60-302 shall, within its jurisdictional area:

(a) examine, approve, or disapprove plans and specifications for the construction of any building, the construction of which is pursuant or purports to be pursuant to the applicable provisions of the state building code or ~~municipal~~ county, city, or town building code, and direct the inspection of the buildings during and in the course of construction;

(b) require that construction of buildings be in accordance with the applicable provisions of the state building code or ~~municipal~~ county, city, or town building code, subject to the powers of variance or modification granted to the department;

(c) make available to building contractors at a price that is commensurate with reproduction costs a checklist devised by the department pursuant to 50-60-118 for single-family dwellings and provide to contractors who attach a completed checklist to the plans submitted for examination the relevant building permit or notice

of plan disapproval within 10 working days of the contractor's submission;

(d) during and in the course of construction, order in writing the remedying of any condition found to exist in, on, or about any building that is being constructed in violation of the ~~applicable state~~ building code or ~~municipal county, city, or town~~ building code. Orders may be served upon the owner or the owner's authorized agent personally or by sending by certified mail a copy of the order to the owner or the owner's authorized agent at the address set forth in the application for permission for the construction of the building. A local building department, by action of an authorized officer, may grant in writing time as may be reasonably necessary for achieving compliance with the order. For the purposes of this subsection (2)(d), the phrase "during and in the course of construction" refers to the construction of a building until all necessary building permits have been obtained and the municipality or county has issued formal written approvals or has issued a certificate of occupancy for the building.

(e) issue certificates of occupancy as provided in 50-60-107;

(f) issue permits, licenses, and other required documents in connection with the construction of a building;

(g) ensure that all construction-related fees or charges imposed and collected by the municipality or county are necessary, reasonable, and uniform and are:

(i) except as provided in subsection (2)(g)(iii), used only for building code enforcement, which consists of those necessary and reasonable costs directly and specifically identifiable for the enforcement of building codes, plus indirect costs charged on the same basis as other local government proprietary funds not paying administrative charges as direct charges. If indirect costs are waived for any local government proprietary fund, they must also be waived for the program established in this section. Indirect charges are limited to the charges that are allowed under federal cost accounting principles that are applicable to a local government.

(ii) reduced if the amount of the fees or charges accumulates above the amount needed to enforce building codes for 12 months. The excess must be placed in a reserve account and may only be used for building code enforcement. Collection and expenditure of fees and charges must be fully documented.

(iii) allocated and remitted to the department, in an amount not to exceed 0.5% of the building fees or charges collected, for the building codes education program established in 50-60-116.

(3) Each ~~municipality or county~~ county, city, or town with a building code enforcement program that has been certified under 50-60-302 may, within ~~its jurisdiction~~ the area of its jurisdiction:

(a) make, amend, and repeal rules for the administration and enforcement of the provisions of this section and for the collection of fees and charges related to construction;

(b) prohibit the commencement of construction until a permit has been issued by the local building department after a showing of compliance with the requirements of the applicable provisions of the state building code or ~~municipal~~ county, city, or town building code; and

(c) enter into a private contract with the owner or builder of a building that is not or will not be within the jurisdiction of the ~~municipality or~~ county, city, or town under which the ~~municipality or~~ county, city, or town will provide reviews, inspections, orders, and certificates of occupancy for a fee and under conditions agreed upon by the parties. ~~Municipal or county~~ County, city, or town powers of enforcement may not be exercised."

SECTION 6. SECTION 50-60-107, MCA, IS AMENDED TO READ:

"50-60-107. Certificate of occupancy. (1) A certificate of occupancy for a building constructed in accordance with the provisions of the state building code or ~~municipal~~ county, city, or town building code ~~shall~~ must certify that the building conforms to the requirements of the building regulations applicable to it.

(2) Every certificate of occupancy, unless and until set aside or vacated by a court of competent jurisdiction, is binding and conclusive upon all ~~municipal~~ county, city, or town agencies as to all matters set forth, and ~~no an~~ order, directive, or requirement at variance ~~therewith~~ with the certificate of occupancy may not be made or issued by any other state agency or ~~municipal~~ county, city, or town agency."

SECTION 7. SECTION 50-60-109, MCA, IS AMENDED TO READ:

"50-60-109. Injunctions authorized. (1) The construction or use of the building in violation of any provision of the state building code or ~~municipal~~ county, city, or town building code or any lawful order of a state building official or a local building department may be enjoined by a judge of the district court in the judicial district in which the building is located.

(2) This section ~~will be~~ is governed by the Montana Rules of Civil Procedure."

SECTION 8. SECTION 50-60-110, MCA, IS AMENDED TO READ:

"50-60-110. Violation a misdemeanor. Any person served with an order pursuant to the provisions of parts 1 through 4 who fails to comply with the order not later than 30 days after service or within the time fixed by the department or a local building department for compliance, whichever is the greater, or any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent, their agents, or any person taking part or assisting in the construction or use of any building who knowingly violates any of the applicable provisions of the state building code or ~~a municipal~~ county, city, or town building code is guilty of a misdemeanor."

SECTION 9. SECTION 50-60-115, MCA, IS AMENDED TO READ:

"50-60-115. Building codes council -- purpose and structure. (1) There is a building codes council for the purpose of assisting the department with the application, implementation, and interpretation of the state building code and building codes adopted by ~~local governments~~ counties, cities, or towns. The council shall work cooperatively with the department and with representatives of the construction industry, as well as members of the interested public, to harmonize building codes and related rules with both the needs of the construction industry and the public interest in efficiency, cost-effectiveness, and safety.

(2) The council consists of 11 members appointed by the governor, unless otherwise specified, as follows:

- (a) a practicing architect licensed in Montana;
 - (b) a practicing professional engineer licensed in Montana;
 - (c) a representative from the building contractor industry;
 - (d) a ~~municipal~~ county, city, or town building inspector;
 - (e) a representative of the manufactured housing industry;
 - (f) a member of the general public who does not hold public office and who does not represent the same industry or agency as another council member;
 - (g) the director of the department of health and human services or the director's designee;
 - (h) a licensed electrician selected by the board of electricians;
 - (i) a licensed plumber selected by the board of plumbers;
 - (j) the state fire marshal or the fire marshal's designee; and
 - (k) a representative of the home building industry.
- (3) The appointed council members serve at the pleasure of the governor for terms of 3 years.
- (4) The council is allocated to the department for administrative purposes only as provided in 2-15-121.
- (5) The council and its members are entitled to compensation as provided in 2-15-122."

SECTION 10. SECTION 50-60-118, MCA, IS AMENDED TO READ:

"50-60-118. Examination of single-family dwelling plans -- statewide approval for model plans -- fee adjustments -- mandatory checklist. (1) The department shall accept for examination and approval or disapproval all model construction plans for single-family dwellings submitted to the department.

(2) Once a model construction plan has been approved, the department shall indicate in writing on the approved plan that the plan is acceptable on a statewide basis and that no further examination is warranted

except with respect to:

- (a) zoning;
- (b) footings, foundations, and basements;
- (c) curbs;
- (d) gutters;
- (e) landscaping;
- (f) utility connections;
- (g) street requirements;
- (h) sidewalks; and
- (i) other requirements specifically related to the exterior of the building.

(3) Local building departments shall reduce plan examination fees commensurate with the reduced time and effort expended resulting from the department's examination provided for in subsection (1).

(4) This section may not be construed to reduce the requirements for obtaining permits for onsite inspection of the residence under construction pursuant to 50-60-106.

(5) (a) The department shall devise a checklist for the examination of single-family dwelling construction plans by the department and by the building code enforcement officials of ~~municipalities and counties~~, cities, and towns.

(b) The checklist must be based upon the most recently adopted edition of the council of American building officials One and Two Family Dwelling Code, as amended.

(c) The checklist is subject to review and amendment by the building codes council provided for in 50-60-115.

(d) The checklist must be made available to building contractors at a price that is commensurate with reproduction costs, and a building contractor who uses the checklist and attaches it to the plans that the contractor submits to the department or a ~~municipality or county~~, city, or town for examination is entitled to receive the relevant building permit or notice of disapproval within 10 days of submission of the completed checklist."

SECTION 11. SECTION 50-60-205, MCA, IS AMENDED TO READ:

"50-60-205. When state building code applies -- health care facility and public health center doors.

(1) If a ~~municipality or county~~, city, or town does not adopt a building code as provided in 50-60-301, the state building code applies within the ~~municipal or county~~, city, or town jurisdictional area and the state will enforce the code in these areas.

(2) Any provision of a building code requiring the installation or maintenance of self-closing or automatic closing corridor doors to patient rooms does not apply to health care facilities as defined in 50-5-101 or to a public health center as defined in 7-34-2102."

SECTION 12. SECTION 50-60-211, MCA, IS AMENDED TO READ:

"50-60-211. Inspections. (1) The construction of a public building or alteration to a primary function area of a public building must be inspected for physical accessibility to persons with disabilities.

(2) The inspection must include the building site, including applicable exterior features, such as parking areas, passenger loading zones, private sidewalks, and the accessibility from adjacent public sidewalks, public streets, and public transportation stops.

(3) (a) The inspections must be completed by state building inspectors in areas not covered by a ~~municipal or county, city, or town~~ building code.

(b) (i) ~~Municipalities and counties~~ Counties, cities, and towns that have adopted a building code may assign appropriately trained personnel to perform site inspections conducted pursuant to this part.

(ii) ~~Municipalities and counties~~ Counties, cities, and towns conducting inspections pursuant to this section must have an enforcement mechanism in place to ensure compliance with the accessibility provisions of this part, including but not limited to denying building permits or certificates of occupancy, injunctions, or other civil enforcement procedures allowed by law.

(4) Existing public buildings that are not undergoing an alteration to a primary function area are not subject to the inspection provisions of this section."

SECTION 13. SECTION 50-60-212, MCA, IS AMENDED TO READ:

"50-60-212. Disclaimer. A building permit or certificate of occupancy issued by the state or by a ~~municipality or county, city, or town~~ must contain a statement that reads: "Compliance with the requirements of the state building code for physical accessibility to persons with disabilities does not necessarily guarantee compliance with the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, the Fair Housing Amendments Act of 1988, Title 49, chapter 2, commonly known as the Montana Human Rights Act, or other similar federal, state, or local laws that mandate accessibility to commercial construction or multifamily housing.""

SECTION 14. SECTION 50-60-213, MCA, IS AMENDED TO READ:

"50-60-213. Accessible exterior routes -- exceptions. (1) Except as provided in subsection (6), for

a public building, an accessible exterior route must be provided from public transportation stops located within the boundary of the building site, from accessible parking and accessible passenger loading zones within the boundaries of the building site, and from public sidewalks that are immediately adjacent to the building site, if sidewalks exist, to the building's accessible entrance served by the transportation stops, parking and loading zones, or sidewalks.

(2) (a) When more than one public building is located on a site, at least one accessible exterior route must connect accessible elements, facilities, and buildings that are on the site.

(b) For the purposes of 50-60-214 and this section, "element" means an architectural or mechanical component of a public building, facility, space, or site and includes but is not limited to telephones, curb ramps, doors, drinking fountains, seating, and water closets.

(3) An accessible exterior route between accessible public parking and an accessible building entrance must be the most practical direct route.

(4) (a) A person or entity constructing a public building is not required to fully comply with the provisions of this section if the person can demonstrate that due to characteristics of the terrain, it is structurally impractical to fully comply.

(b) Full compliance may be considered structurally impractical only in those rare circumstances when the unique characteristics of the terrain prevent the incorporation of accessibility features.

(c) The person or entity shall comply with the provisions of this section to the extent that compliance is not structurally impractical.

(d) The department shall adopt rules to assist all interested parties involved in the design, construction, and inspection processes in determining structural impracticality.

(5) (a) If a paved parking lot is not planned or present for a public building, a person or entity constructing the public building is not required to pave the entire lot, unless otherwise required by law, ordinance, or applicable building code, but shall provide pavement or a similarly firm, stable, and slip-resistant surface for parking spaces designated for persons with disabilities.

(b) An accessible exterior route with a suitably firm, stable, and slip-resistant surface must be provided from the designated parking spaces to an accessible building or facility entrance.

(c) The total number of designated accessible parking spaces in a parking lot or area must be the number provided for in the applicable state building code or ~~local government~~ county, city, or town building code.

(6) An accessible route is not required in cases where there is not a pedestrian route for the general public.

(7) The state, ~~municipalities, and counties,~~ cities, and towns shall use the same accessibility standards."

SECTION 15. SECTION 50-60-301, MCA, IS AMENDED TO READ:

"50-60-301. ~~Municipal and county~~ County, city, and town building codes authorized -- health care facility and public health center doors -- fee adjustment for model plans. (1) The local legislative body of a ~~municipality or county,~~ city, or town may adopt a building code to apply to the ~~municipal or county,~~ city, or town ~~jurisdictional area~~ by an ordinance or resolution, as appropriate:

(a) adopting a building code; or

(b) authorizing the adoption of a building code by administrative action.

(2) A ~~municipal or county,~~ city, or town building code may include only codes adopted by the department.

(3) Any provision of a building code requiring the installation or maintenance of self-closing or automatic closing corridor doors to patient rooms does not apply to health care facilities, as defined in 50-5-101, or to a public health center, as defined in 7-34-2102.

(4) (a) When the same single-family dwelling plan is constructed at more than one site, the ~~municipality or county,~~ city, or town shall, after the first examination of the plan, adjust the required plan fee to reflect only the cost of reviewing requirements pertaining to the review of:

(i) zoning;

(ii) footings, foundations, and basements;

(iii) curbs;

(iv) gutters;

(v) landscaping;

(vi) utility connections;

(vii) street requirements;

(viii) sidewalks; and

(ix) other requirements related specifically to the exterior of the building.

(b) If a building contractor alters the single-family dwelling plan referred to in subsection (4)(a) in a fashion that substantially affects the building code requirements, the ~~municipality or county,~~ city, or town may impose the full examination fee permitted under 50-60-106."

SECTION 16. SECTION 50-60-302, MCA, IS AMENDED TO READ:

"50-60-302. Certification of ~~municipal and county,~~ city, or town building codes. (1) A county, ~~or~~

~~municipality~~ city, or town may not enforce a building code unless:

(a) the code enforcement program has been certified by the department as in compliance with applicable statutes and department certification rules;

(b) the current adopted code, a current list of fees to be imposed, and a current plan for enforcement of the code have been filed with and approved by the department; and

(c) all inspectors inspecting or approving any installations, which if accomplished commercially require state licensure, must themselves be properly and currently state-licensed as journeymen in that craft or occupation or be certified by a nationally recognized entity for testing and certification of inspectors that is approved by the department before being permitted to inspect or approve any installations.

(2) The department shall adopt additional rules and standards governing the certification of ~~municipal and county~~, city, and town building code enforcement programs that must include provisions for prompt revocation of certification for refusal or failure to comply with any applicable statute or rule. The department may allow a county, ~~or municipality~~ city, or town a reasonable amount of time, not to exceed 6 months, to correct identified code enforcement program deficiencies, unless the deficiencies constitute an immediate threat to the public health, safety, or welfare, in which case the department may require immediate correction. Failure to correct deficiencies within the time set by the department constitutes a basis for immediate decertification of the code enforcement program. Continued operation of a county, ~~or municipal~~ city, or town code enforcement program in violation of a department order to correct deficiencies may be enjoined or subject to a writ of mandamus by a judge of the district court in the jurisdiction in which the county, ~~or municipality~~ city, or town is located. The rules and standards must include provisions for the department to ensure that all code enforcement program functions are being properly performed.

(3) If the certification of any local government code enforcement program is revoked for any violation or deficiency, the state resumes its original jurisdiction for state building code enforcement within the ~~municipal or county~~, city, or town area and the local government retains the responsibility for completion of inspections and issuance of certificates of occupancy on any incomplete construction projects previously permitted by the ~~local government~~ county, city, or town, unless the reason for the decertification is directly related to the protection of health, safety, and welfare of the public.

(4) If a ~~local government~~ county, city, or town voluntarily decertifies its code enforcement program, the department must be given written notification of the intended decertification at least 90 days prior to the date of decertification. The ~~local government~~ county, city, or town retains the responsibility for completion of inspections and issuance of certificates of occupancy on any incomplete construction projects permitted by the ~~local~~

~~government~~ county, city, or town prior to decertifying its code enforcement program."

SECTION 17. SECTION 50-60-303, MCA, IS AMENDED TO READ:

"50-60-303. ~~Municipal and county~~ County, city, or town appeal procedure. (1) If a ~~municipality or~~ county, city, or town adopts a building code, it shall also establish an appeal procedure by ordinance or resolution, as appropriate, that is acceptable to the department.

(2) If a ~~municipality or~~ county, city, or town does not adopt a code, appeals on the application of the state building code within the ~~municipal or~~ county, city, or town jurisdictional area must be made to the department."

SECTION 18. SECTION 50-60-404, MCA, IS AMENDED TO READ:

"50-60-404. Enforcement of building construction standards for modular homes. (1) The provisions of this chapter apply to factory-built modular or prebuilt homes or buildings.

(2) A ~~municipality~~ county, city, or town may regulate the construction of factory-built modular or prebuilt homes or buildings as provided in 50-60-106 if:

- (a) the homes or buildings are constructed inside the jurisdiction of the ~~municipality~~ county, city, or town;
- (b) the homes or buildings are sold primarily to persons in the county in which the factory is located;
- (c) the factory does not manufacture more than 100 homes or buildings a year; and
- (d) the ~~municipality~~ county, city, or town has an agency or officer assigned to inspect and enforce building construction standards.

(3) Inspection and enforcement approval given by a ~~municipality~~ county, city, or town under this section may be recognized and accepted by any other ~~municipality~~ county, city, or town of the state to which the factory-built home or building is transported for final installation. Additional inspections need not be conducted."

SECTION 19. SECTION 50-60-506, MCA, IS AMENDED TO READ:

"50-60-506. Exceptions to permit requirement. (1) ~~No~~ A permit is not required for any minor replacement or repair work, the performance of which does not have a significant potential for creating a condition hazardous to public health and safety.

(2) ~~No~~ A permit is not required where the installation is exempt under the provisions of 37-69-102 or 50-60-503.

(3) ~~No~~ A state permit is NOT required whenever the installation occurs in an area governed by a ~~municipality~~ county, city, or town and where there is in effect a ~~municipal~~ county, city, or town building code ~~which~~

that covers plumbing installations and ~~which~~ that provides inspection procedures.

(4) ~~Nothing contained in this~~ This part shall ~~does not~~ prohibit the owner of residential property from making an installation for all sanitary plumbing and potable water supply piping without a permit ~~providing he if~~ the owner personally does the work ~~himself~~.

(5) The provisions of this part do not apply to regularly employed maintenance personnel doing maintenance work on the business premises of their employer unless the work is subject to the permit provisions of this part."

SECTION 20. SECTION 50-60-510, MCA, IS AMENDED TO READ:

"50-60-510. Inspections to ensure compliance. All plumbing and drainage systems may be inspected by the department of labor and industry or an authorized representative or by a municipality or county, city, or town certified to perform an inspection pursuant to 50-60-302 in order to ensure compliance with the requirements of the state plumbing code. As part of any inspection, the inspector shall request proof of licensure from any person who is required to be licensed who is involved with or, in the inspector's judgment, appears to be involved with plumbing activities if the person is on the site. The inspector shall report any instance of license violation to the inspector's employing agency, and the employing agency shall in turn report the violation to the board of plumbers."

SECTION 21. SECTION 50-60-604, MCA, IS AMENDED TO READ:

"50-60-604. Inspections -- electrical permits -- fees. The department of labor and industry or an authorized representative or a ~~municipality or county, city, or town~~ certified to perform an inspection pursuant to 50-60-302 shall inspect electrical installations, issue electrical permits for these installations, and establish and charge a reasonable and uniform fee for the inspections. The fee must be commensurate with the expense of providing the inspection and with appropriations for other purposes. As part of any inspection, the inspector shall require proof of licensure from any person who is required to be licensed who is involved with or, in the inspector's judgment, appears to be involved with electrical installations if the person is on the site. The inspector shall report any instance of license violation to the inspector's employing agency, and the employing agency shall in turn report the violation to the board of electricians."

SECTION 22. SECTION 50-60-605, MCA, IS AMENDED TO READ:

"50-60-605. Power supplier not to energize installation without electrical permit. Individuals, firms,

cooperatives, corporations, or municipalities selling electricity are power suppliers. Except for temporary connections that the department of labor and industry may authorize by rule for a period not exceeding 14 days without a preconnection inspection, power suppliers may not connect with or energize an electrical installation under this part unless the owner or a licensed electrical contractor has delivered to the power supplier an electrical permit covering the installation, issued by the department of labor and industry or a ~~municipality or~~ county, city, or town certified to enforce the electrical code pursuant to 50-60-302."

SECTION 23. SECTION 50-60-607, MCA, IS AMENDED TO READ:

"50-60-607. Energizing electrical installation without permit -- misdemeanor. Any person, partnership, company, firm, association, or corporation, other than a power supplier, that energizes an electrical installation under this part for which an electrical permit has not been issued by the department of labor and industry or a ~~municipality or~~ county, city, or town certified to enforce the electrical code pursuant to 50-60-302 is guilty of a misdemeanor."

NEW SECTION. SECTION 24. AREA OF APPLICABILITY OF COUNTY, CITY, OR TOWN BUILDING CODE -- ENFORCEMENT. (1) A CITY OR TOWN THAT ADOPTS A BUILDING CODE UNDER THIS CHAPTER MAY ENFORCE ITS BUILDING CODE ONLY WITHIN THE INCORPORATED LIMITS OF THE CITY OR TOWN.

(2) A COUNTY MAY ADOPT A BUILDING CODE UNDER THIS CHAPTER ON A COUNTYWIDE BASIS UNLESS A CITY OR TOWN WITHIN THE COUNTY HAS ADOPTED A BUILDING CODE. IF A CITY OR TOWN WITHIN THE COUNTY HAS ADOPTED A BUILDING CODE, THEN THE COUNTY MAY NOT ENFORCE THE COUNTY BUILDING CODE IN THAT CITY OR TOWN.

(3) A COUNTY, CITY, OR TOWN MAY CONTRACT FOR THE ENFORCEMENT OF ITS BUILDING CODE.

NEW SECTION. SECTION 25. TRANSITION. (1) A MUNICIPALITY IS RESPONSIBLE FOR COMPLETING INSPECTIONS THAT ARE REQUIRED FOR THOSE BUILDING, ELECTRICAL, PLUMBING, AND MECHANICAL PERMITS ISSUED BY THE MUNICIPALITY IN AN EXTENDED JURISDICTIONAL AREA PRIOR TO OCTOBER 1, 2003.

(2) A PROJECT IN AN EXTENDED JURISDICTIONAL AREA THAT REQUIRED A BUILDING PERMIT PRIOR TO OCTOBER 1, 2003, IS SUBJECT TO CITY OR TOWN JURISDICTION UNTIL THE PROJECT IS COMPLETED. A MUNICIPALITY MAY NOT APPLY ITS BUILDING CODE TO A NEW PROJECT AFTER OCTOBER 1, 2003.

(3) A COUNTY THAT HAS NOT ADOPTED A BUILDING CODE PRIOR TO [THE EFFECTIVE DATE OF THIS SECTION] MAY ADOPT A BUILDING CODE, BUT THE BUILDING CODE MAY NOT BE EFFECTIVE BEFORE OCTOBER 1, 2003.

NEW SECTION. Section 26. Repealer. Sections 50-60-310, 50-60-311, 50-60-312, 50-60-313, and 50-60-314, MCA, are repealed.

NEW SECTION. SECTION 27. CODIFICATION INSTRUCTION. [SECTION 24] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 50, CHAPTER 60, PART 3, AND THE PROVISIONS OF TITLE 50, CHAPTER 60, PART 3, APPLY TO [SECTION 24].

NEW SECTION. Section 28. Effective date DATES. ~~[This act] is~~ (1) EXCEPT AS PROVIDED IN SUBSECTION (2), [THIS ACT] IS EFFECTIVE OCTOBER 1, 2003.

(2) [SECTION 25 AND THIS SECTION] ARE effective on passage and approval.

~~NEW SECTION. Section 7. Retroactive applicability. [Section 5] applies retroactively, within the meaning of 1-2-109, to May 1, 2001.~~

- END -



AN ACT REVISING LOCAL GOVERNMENT BUILDING CODE AUTHORITY; ELIMINATING THE ABILITY OF A COUNTY TO DESIGNATE A PORTION OF A COUNTY OUTSIDE OF A CITY OR TOWN AS THE COUNTY JURISDICTIONAL AREA; ELIMINATING ELECTION REQUIREMENTS RELATED TO BUILDING CODES; REVISING DEFINITIONS AND THE USE OF DEFINED TERMS; PROVIDING A TRANSITION PERIOD CONCERNING JURISDICTION; AMENDING SECTIONS 13-19-106, 50-3-103, 50-60-101, 50-60-102, 50-60-106, 50-60-107, 50-60-109, 50-60-110, 50-60-115, 50-60-118, 50-60-205, 50-60-211, 50-60-212, 50-60-213, 50-60-301, 50-60-302, 50-60-303, 50-60-404, 50-60-506, 50-60-510, 50-60-604, 50-60-605, AND 50-60-607, MCA; REPEALING SECTIONS 50-60-310, 50-60-311, 50-60-312, 50-60-313, AND 50-60-314, MCA; AND PROVIDING EFFECTIVE DATES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 13-19-106, MCA, is amended to read:

"13-19-106. General requirements for mail ballot election --exception for county building code jurisdiction election. A mail ballot election must be conducted substantially as follows:

(1) Official ballots must be prepared and all other initial procedures followed as otherwise provided by law, except that mail ballots are not required to have stubs.

(2) ~~(a) Except as provided in subsection (2)(b), an~~ An official ballot must be mailed to every qualified elector of the political subdivision conducting the election.

~~(b) In an election to determine whether to adopt a building code enforcement program within a county jurisdictional area, as defined in 50-60-101 and designated by a board of county commissioners pursuant to 50-60-310, an official ballot must be mailed to every record owner of real property in the county jurisdictional area.~~

(3) Each return/verification envelope must contain a form prescribed by the secretary of state for the elector to verify the accuracy of the elector's address or notify the election administrator of the elector's correct mailing address and to return the corrected address with the voted ballot in the manner provided by 13-19-306.

(4) The elector shall mark the ballot at home and place it in a secrecy envelope.

(5) The elector shall then place the secrecy envelope containing the elector's ballot in a return/verification envelope and shall return it by mailing it or delivering it in person to a place of deposit designated by the election

administrator so that it is received before a specified time on election day.

(6) Once returned, election officials shall first qualify the submitted ballot by examining the return/verification envelope to determine whether it is submitted by a qualified elector who has not previously voted.

(7) If the ballot qualifies and is otherwise valid, officials shall then open the return/verification envelope and remove the secrecy envelope, which is then voted by depositing it unopened in an official ballot box.

(8) After the close of polls on election day, voted ballots must be counted and canvassed as otherwise provided by law."

Section 2. Section 50-3-103, MCA, is amended to read:

"50-3-103. Rules promulgated by department. (1) Rules promulgated by the department by authority of 50-3-102 must be reasonable and calculated to effect the purposes of this chapter. The rules must include but are not limited to requirements for:

(a) design, construction, installation, operation, storage, handling, maintenance, or use of structural requirements for various types of construction;

(b) building restrictions within congested districts;

(c) exit facilities from structures;

(d) fire extinguishers, fire alarm systems, and fire extinguishing systems;

(e) fire emergency drills;

(f) flue and chimney construction;

(g) heating devices;

(h) electrical wiring and equipment;

(i) air conditioning, ventilating, and other duct systems;

(j) refrigeration systems;

(k) flammable liquids;

(l) oil and gas wells;

(m) application of flammable finishes;

(n) explosives, acetylene, liquefied petroleum gas, and similar products;

(o) calcium carbide and acetylene generators;

(p) flammable motion picture film;

- (q) combustible fibers;
- (r) hazardous chemicals or materials;
- (s) rubbish;
- (t) open-flame devices;
- (u) parking of vehicles;
- (v) dust explosions;
- (w) lightning protection;
- (x) storage of smokeless powder and small arms primers; and
- (y) other special fire hazards.

(2) If rules relate to building and equipment standards covered by the state building code or a ~~municipal~~ county, city, or town building code, the rules are effective upon approval of the department of labor and industry and filing with the secretary of state.

(3) Federal or other nationally recognized standards for fire protection may be adopted in whole or in part by reference.

(4) Rules must be adopted as prescribed in the Montana Administrative Procedure Act.

(5) Rules promulgated by the department may not prevent the installation of an aboveground storage tank in a community, city, or town with a population of 1,500 or less if the tank is installed in conformance with all other applicable laws and regulations.

(6) Rules promulgated by the department may not require diked areas or heat-actuated or other shutoff devices for storage tanks containing class I or class II liquids, as defined in the uniform fire code, intended only for private use on farms and ranches.

(7) A person violating any rule made under the provisions of this part is guilty of a misdemeanor."

Section 3. Section 50-60-101, MCA, is amended to read:

"50-60-101. Definitions. As used in parts 1 through 4 and 7 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Alteration" means any change, addition, or modification in construction or occupancy.

(2) "Building" means a combination of any materials, whether mobile, portable, or fixed, to form a structure and the related facilities for the use or occupancy by persons or property. The term must be construed as though followed by the words "or part or parts of a building".

(3) (a) "Building regulations" means any law, rule, resolution, regulation, ordinance, or code, general or special, or compilation of laws, rules, resolutions, regulations, ordinances, or codes enacted or adopted by the state or any municipality, including departments, boards, bureaus, commissions, or other agencies of the state or a municipality relating to the design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings and installation of equipment in buildings.

(b) The term does not include zoning ordinances.

(4) "City or town" means an incorporated city or town as provided for in Title 7, chapter 2, part 41.

~~(4)~~(5) "Code enforcement program" means the plan for enforcement of the building regulations adopted by a municipality or county and includes the local building department and the staff associated with executing any aspect of the program's purposes or functions.

~~(5)~~(6) "Construction" means the original construction and equipment of buildings and requirements or standards relating to or affecting materials used, including provisions for safety and sanitary conditions.

~~—— (6) "County jurisdictional area" means the entire county, or an area or areas within the county, designated by the board of county commissioners as subject to the county building code, excluding any area that is within the limits of an incorporated municipality.~~

(7) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(8) "Equipment" means plumbing, heating, electrical, ventilating, air conditioning, and refrigerating equipment, elevators, dumbwaiters, escalators, and other mechanical additions or installations.

(9) (a) "Factory-built building" means a factory-assembled structure or structures equipped with the necessary service connections but not made so as to be readily movable as a unit or units and designed to be used with a permanent foundation.

(b) The term does not include manufactured housing constructed after June 15, 1976, under the National Mobile Home Construction and Safety Standards Act of 1974, 42 U.S.C. 5401, et seq.

(10) "Local building department" means the agency or agencies of a ~~municipality~~ county, city, or town charged with the administration, supervision, or enforcement of building regulations, the approval of plans, the inspection of buildings, or the issuance of permits, licenses, certificates, and similar documents prescribed or required by state or local building regulations.

(11) "Local legislative body" means the council or commission charged with governing the ~~municipality~~ county, city, or town.

~~—— (12) "Municipal jurisdictional area" means the area within the limits of an incorporated municipality.~~

~~(13)~~ "Municipality" means any incorporated city or town.

~~(14)~~(12) "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a building.

~~(15)~~(13) (a) "Primary function area" means an area of a building or facility in which a major activity for which the building or facility is designed is carried out. Primary function areas include but are not limited to a customer service lobby of a savings institution, a cafeteria dining area, and meeting rooms of a conference center.

(b) Areas that are not primary function areas include but are not limited to boiler rooms, storage rooms, employee lounges, janitorial closets, entrances, corridors, and restrooms.

~~(16)~~(14) "Public building" means a building or facility owned or operated by a governmental entity or a private sector building or facility that is open to members of the public.

~~(17)~~(15) "Public sidewalk" means a sidewalk located in a public right-of-way.

~~(18)~~(16) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own mode of power or is mounted on or towed by another vehicle, including but not limited to a:

- (a) travel trailer;
- (b) camping trailer;
- (c) truck camper; or
- (d) motor home.

~~(19)~~(17) "Site" means a parcel of land bounded by property lines or a designated portion of a public right-of-way.

~~(20)~~(18) "State agency" means any state officer, department, board, bureau, commission, or other agency of this state.

~~(21)~~(19) "State building code" means the state building code provided for in 50-60-203 or any portion of the code of limited application and any of its modifications or amendments."

Section 4. Section 50-60-102, MCA, is amended to read:

"50-60-102. Applicability. (1) Except as provided in subsection (5), the state building code, as defined in 50-60-203(3), does not apply to:

(a) residential buildings containing less than five dwelling units or their attached-to structures, any farm or ranch building of any size, and any private garage or private storage structure of any size used only for the owner's own use, located within ~~the municipality's or county's jurisdictional area~~ a county, city, or town, unless the local legislative body ~~or board of county commissioners~~ by ordinance or resolution makes the state building code applicable to these structures;

(b) mines and buildings on mine property regulated under Title 82, chapter 4, and subject to inspection under the Federal Mine Safety and Health Act;

(c) petroleum refineries and pulp and paper mills, except a structure classified under chapter 7, section 701, group B, division 2, and chapter 9, section 901, group H, outside of process units, of the 1991 edition of the Uniform Building Code; or

(d) industrial process piping, vessels, and equipment and process-related structures located outside of another structure occupied on a regular basis by employees or the public.

(2) Except as provided in subsection (5), the state may not enforce the state building code under 50-60-205 for the buildings referred to in subsection (1). ~~Local governments~~ A county, city, or town that ~~have~~ has made the state building code applicable to the buildings referred to in subsection (1) may enforce within ~~their jurisdictional areas~~ the area of its jurisdiction the state building code as adopted by the ~~respective local government~~ county, city, or town.

(3) When good and sufficient cause exists, a written request for limitation of the state building code may be filed with the department for filing as a permanent record.

(4) The department may limit the application of any rule or portion of the state building code to include or exclude:

(a) specified classes or types of buildings according to use or other distinctions as may make differentiation or separate classification or regulation necessary, proper, or desirable;

(b) specified areas of the state based on size, population density, special conditions prevailing in the area, or other factors that make differentiation or separate classification or regulation necessary, proper, or desirable.

(5) (a) For purposes of promoting the energy efficiency of home design and operation, the provisions of the state building code relating to energy conservation adopted pursuant to 50-60-203(1) apply to residential buildings, except:

(i) farm and ranch buildings; and

(ii) any private garage or private storage structure attached to a residential building and used only for the owner's own use.

(b) The provisions of the state building code relating to energy conservation in residential buildings are enforceable:

(i) by the department only for those residential buildings containing five or more dwelling units or otherwise subject to the state building code; and

(ii) through the builder self-certification program provided for in 50-60-802 for those residential buildings containing less than five dwelling units and not otherwise subject to the state building code."

Section 5. Section 50-60-106, MCA, is amended to read:

"50-60-106. Powers and duties of ~~municipalities~~ counties, cities, and towns. (1) The examination, approval, or disapproval of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and similar documents, the inspection of buildings, and the administration and enforcement of building regulations within the ~~municipal jurisdictional area~~ limits of a city or town are the responsibility of the ~~municipalities~~ city or town of the state. The examination, approval, or disapproval of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and similar documents, the inspection of buildings, and the administration and enforcement of building regulations within the portion of a county that is covered by a county building code are the responsibility of the county.

(2) Each ~~municipality or county, city, or town~~ certified under 50-60-302 shall, within its jurisdictional area:

(a) examine, approve, or disapprove plans and specifications for the construction of any building, the construction of which is pursuant or purports to be pursuant to the applicable provisions of the state building code or ~~municipal~~ county, city, or town building code, and direct the inspection of the buildings during and in the course of construction;

(b) require that construction of buildings be in accordance with the applicable provisions of the state building code or ~~municipal~~ county, city, or town building code, subject to the powers of variance or modification granted to the department;

(c) make available to building contractors at a price that is commensurate with reproduction costs a checklist devised by the department pursuant to 50-60-118 for single-family dwellings and provide to contractors who attach a completed checklist to the plans submitted for examination the relevant building permit or notice of plan disapproval within 10 working days of the contractor's submission;

(d) during and in the course of construction, order in writing the remedying of any condition found to exist in, on, or about any building that is being constructed in violation of the ~~applicable~~ state building code or ~~municipal county, city, or town~~ building code. Orders may be served upon the owner or the owner's authorized agent personally or by sending by certified mail a copy of the order to the owner or the owner's authorized agent at the address set forth in the application for permission for the construction of the building. A local building department, by action of an authorized officer, may grant in writing time as may be reasonably necessary for achieving compliance with the order. For the purposes of this subsection (2)(d), the phrase "during and in the course of construction" refers to the construction of a building until all necessary building permits have been obtained and the municipality or county has issued formal written approvals or has issued a certificate of occupancy for the building.

(e) issue certificates of occupancy as provided in 50-60-107;

(f) issue permits, licenses, and other required documents in connection with the construction of a building;

(g) ensure that all construction-related fees or charges imposed and collected by the municipality or county are necessary, reasonable, and uniform and are:

(i) except as provided in subsection (2)(g)(iii), used only for building code enforcement, which consists of those necessary and reasonable costs directly and specifically identifiable for the enforcement of building codes, plus indirect costs charged on the same basis as other local government proprietary funds not paying administrative charges as direct charges. If indirect costs are waived for any local government proprietary fund, they must also be waived for the program established in this section. Indirect charges are limited to the charges that are allowed under federal cost accounting principles that are applicable to a local government.

(ii) reduced if the amount of the fees or charges accumulates above the amount needed to enforce building codes for 12 months. The excess must be placed in a reserve account and may only be used for building code enforcement. Collection and expenditure of fees and charges must be fully documented.

(iii) allocated and remitted to the department, in an amount not to exceed 0.5% of the building fees or charges collected, for the building codes education program established in 50-60-116.

(3) Each ~~municipality or county~~ county, city, or town with a building code enforcement program that has been certified under 50-60-302 may, within ~~its jurisdiction~~ the area of its jurisdiction:

(a) make, amend, and repeal rules for the administration and enforcement of the provisions of this section and for the collection of fees and charges related to construction;

(b) prohibit the commencement of construction until a permit has been issued by the local building department after a showing of compliance with the requirements of the applicable provisions of the state building code or ~~municipal~~ county, city, or town building code; and

(c) enter into a private contract with the owner or builder of a building that is not or will not be within the jurisdiction of the ~~municipality or~~ county, city, or town under which the ~~municipality or~~ county, city, or town will provide reviews, inspections, orders, and certificates of occupancy for a fee and under conditions agreed upon by the parties. ~~Municipal or county~~ County, city, or town powers of enforcement may not be exercised."

Section 6. Section 50-60-107, MCA, is amended to read:

"50-60-107. Certificate of occupancy. (1) A certificate of occupancy for a building constructed in accordance with the provisions of the state building code or ~~municipal~~ county, city, or town building code ~~shall~~ must certify that the building conforms to the requirements of the building regulations applicable to it.

(2) Every certificate of occupancy, unless and until set aside or vacated by a court of competent jurisdiction, is binding and conclusive upon all ~~municipal~~ county, city, or town agencies as to all matters set forth, and ~~no an~~ order, directive, or requirement at variance ~~therewith~~ with the certificate of occupancy may not be made or issued by any other state agency or ~~municipal~~ county, city, or town agency."

Section 7. Section 50-60-109, MCA, is amended to read:

"50-60-109. Injunctions authorized. (1) The construction or use of the building in violation of any provision of the state building code or ~~municipal~~ county, city, or town building code or any lawful order of a state building official or a local building department may be enjoined by a judge of the district court in the judicial district in which the building is located.

(2) This section ~~will be~~ is governed by the Montana Rules of Civil Procedure."

Section 8. Section 50-60-110, MCA, is amended to read:

"50-60-110. Violation a misdemeanor. Any person served with an order pursuant to the provisions of parts 1 through 4 who fails to comply with the order not later than 30 days after service or within the time fixed by the department or a local building department for compliance, whichever is the greater, or any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent, their agents, or any person taking part or assisting in the construction or use of any building who knowingly violates any of the applicable provisions of

the state building code or a ~~municipal~~ county, city, or town building code is guilty of a misdemeanor."

Section 9. Section 50-60-115, MCA, is amended to read:

"50-60-115. Building codes council -- purpose and structure. (1) There is a building codes council for the purpose of assisting the department with the application, implementation, and interpretation of the state building code and building codes adopted by ~~local governments~~ counties, cities, or towns. The council shall work cooperatively with the department and with representatives of the construction industry, as well as members of the interested public, to harmonize building codes and related rules with both the needs of the construction industry and the public interest in efficiency, cost-effectiveness, and safety.

(2) The council consists of 11 members appointed by the governor, unless otherwise specified, as follows:

- (a) a practicing architect licensed in Montana;
 - (b) a practicing professional engineer licensed in Montana;
 - (c) a representative from the building contractor industry;
 - (d) a ~~municipal~~ county, city, or town building inspector;
 - (e) a representative of the manufactured housing industry;
 - (f) a member of the general public who does not hold public office and who does not represent the same industry or agency as another council member;
 - (g) the director of the department of health and human services or the director's designee;
 - (h) a licensed electrician selected by the board of electricians;
 - (i) a licensed plumber selected by the board of plumbers;
 - (j) the state fire marshal or the fire marshal's designee; and
 - (k) a representative of the home building industry.
- (3) The appointed council members serve at the pleasure of the governor for terms of 3 years.
- (4) The council is allocated to the department for administrative purposes only as provided in 2-15-121.
- (5) The council and its members are entitled to compensation as provided in 2-15-122."

Section 10. Section 50-60-118, MCA, is amended to read:

"50-60-118. Examination of single-family dwelling plans -- statewide approval for model plans -- fee adjustments -- mandatory checklist. (1) The department shall accept for examination and approval or

disapproval all model construction plans for single-family dwellings submitted to the department.

(2) Once a model construction plan has been approved, the department shall indicate in writing on the approved plan that the plan is acceptable on a statewide basis and that no further examination is warranted except with respect to:

- (a) zoning;
- (b) footings, foundations, and basements;
- (c) curbs;
- (d) gutters;
- (e) landscaping;
- (f) utility connections;
- (g) street requirements;
- (h) sidewalks; and
- (i) other requirements specifically related to the exterior of the building.

(3) Local building departments shall reduce plan examination fees commensurate with the reduced time and effort expended resulting from the department's examination provided for in subsection (1).

(4) This section may not be construed to reduce the requirements for obtaining permits for onsite inspection of the residence under construction pursuant to 50-60-106.

(5) (a) The department shall devise a checklist for the examination of single-family dwelling construction plans by the department and by the building code enforcement officials of ~~municipalities and counties~~, cities, and towns.

(b) The checklist must be based upon the most recently adopted edition of the council of American building officials One and Two Family Dwelling Code, as amended.

(c) The checklist is subject to review and amendment by the building codes council provided for in 50-60-115.

(d) The checklist must be made available to building contractors at a price that is commensurate with reproduction costs, and a building contractor who uses the checklist and attaches it to the plans that the contractor submits to the department or a ~~municipality or county~~, city, or town for examination is entitled to receive the relevant building permit or notice of disapproval within 10 days of submission of the completed checklist."

Section 11. Section 50-60-205, MCA, is amended to read:

"50-60-205. When state building code applies -- health care facility and public health center doors.

(1) If a ~~municipality or county, city, or town~~ does not adopt a building code as provided in 50-60-301, the state building code applies within the ~~municipal or county, city, or town jurisdictional area~~ and the state will enforce the code in these areas.

(2) Any provision of a building code requiring the installation or maintenance of self-closing or automatic closing corridor doors to patient rooms does not apply to health care facilities as defined in 50-5-101 or to a public health center as defined in 7-34-2102."

Section 12. Section 50-60-211, MCA, is amended to read:

"50-60-211. Inspections. (1) The construction of a public building or alteration to a primary function area of a public building must be inspected for physical accessibility to persons with disabilities.

(2) The inspection must include the building site, including applicable exterior features, such as parking areas, passenger loading zones, private sidewalks, and the accessibility from adjacent public sidewalks, public streets, and public transportation stops.

(3) (a) The inspections must be completed by state building inspectors in areas not covered by a ~~municipal or county, city, or town~~ building code.

(b) (i) ~~Municipalities and counties~~ Counties, cities, and towns that have adopted a building code may assign appropriately trained personnel to perform site inspections conducted pursuant to this part.

(ii) ~~Municipalities and counties~~ Counties, cities, and towns conducting inspections pursuant to this section must have an enforcement mechanism in place to ensure compliance with the accessibility provisions of this part, including but not limited to denying building permits or certificates of occupancy, injunctions, or other civil enforcement procedures allowed by law.

(4) Existing public buildings that are not undergoing an alteration to a primary function area are not subject to the inspection provisions of this section."

Section 13. Section 50-60-212, MCA, is amended to read:

"50-60-212. Disclaimer. A building permit or certificate of occupancy issued by the state or by a ~~municipality or county, city, or town~~ must contain a statement that reads: "Compliance with the requirements of the state building code for physical accessibility to persons with disabilities does not necessarily guarantee compliance with the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, the Fair Housing

Amendments Act of 1988, Title 49, chapter 2, commonly known as the Montana Human Rights Act, or other similar federal, state, or local laws that mandate accessibility to commercial construction or multifamily housing."''

Section 14. Section 50-60-213, MCA, is amended to read:

"50-60-213. Accessible exterior routes -- exceptions. (1) Except as provided in subsection (6), for a public building, an accessible exterior route must be provided from public transportation stops located within the boundary of the building site, from accessible parking and accessible passenger loading zones within the boundaries of the building site, and from public sidewalks that are immediately adjacent to the building site, if sidewalks exist, to the building's accessible entrance served by the transportation stops, parking and loading zones, or sidewalks.

(2) (a) When more than one public building is located on a site, at least one accessible exterior route must connect accessible elements, facilities, and buildings that are on the site.

(b) For the purposes of 50-60-214 and this section, "element" means an architectural or mechanical component of a public building, facility, space, or site and includes but is not limited to telephones, curb ramps, doors, drinking fountains, seating, and water closets.

(3) An accessible exterior route between accessible public parking and an accessible building entrance must be the most practical direct route.

(4) (a) A person or entity constructing a public building is not required to fully comply with the provisions of this section if the person can demonstrate that due to characteristics of the terrain, it is structurally impractical to fully comply.

(b) Full compliance may be considered structurally impractical only in those rare circumstances when the unique characteristics of the terrain prevent the incorporation of accessibility features.

(c) The person or entity shall comply with the provisions of this section to the extent that compliance is not structurally impractical.

(d) The department shall adopt rules to assist all interested parties involved in the design, construction, and inspection processes in determining structural impracticality.

(5) (a) If a paved parking lot is not planned or present for a public building, a person or entity constructing the public building is not required to pave the entire lot, unless otherwise required by law, ordinance, or applicable building code, but shall provide pavement or a similarly firm, stable, and slip-resistant surface for parking spaces designated for persons with disabilities.

(b) An accessible exterior route with a suitably firm, stable, and slip-resistant surface must be provided from the designated parking spaces to an accessible building or facility entrance.

(c) The total number of designated accessible parking spaces in a parking lot or area must be the number provided for in the applicable state building code or ~~local government~~ county, city, or town building code.

(6) An accessible route is not required in cases where there is not a pedestrian route for the general public.

(7) The state, ~~municipalities, and counties,~~ cities, and towns shall use the same accessibility standards."

Section 15. Section 50-60-301, MCA, is amended to read:

"50-60-301. ~~Municipal and county~~ County, city, and town building codes authorized -- health care facility and public health center doors -- fee adjustment for model plans. (1) The local legislative body of a ~~municipality or county,~~ city, or town may adopt a building code to apply to the ~~municipal or county,~~ city, or town ~~jurisdictional area~~ by an ordinance or resolution, as appropriate:

(a) adopting a building code; or

(b) authorizing the adoption of a building code by administrative action.

(2) A ~~municipal or county,~~ city, or town building code may include only codes adopted by the department.

(3) Any provision of a building code requiring the installation or maintenance of self-closing or automatic closing corridor doors to patient rooms does not apply to health care facilities, as defined in 50-5-101, or to a public health center, as defined in 7-34-2102.

(4) (a) When the same single-family dwelling plan is constructed at more than one site, the ~~municipality or county,~~ city, or town shall, after the first examination of the plan, adjust the required plan fee to reflect only the cost of reviewing requirements pertaining to the review of:

(i) zoning;

(ii) footings, foundations, and basements;

(iii) curbs;

(iv) gutters;

(v) landscaping;

(vi) utility connections;

(vii) street requirements;

(viii) sidewalks; and

(ix) other requirements related specifically to the exterior of the building.

(b) If a building contractor alters the single-family dwelling plan referred to in subsection (4)(a) in a fashion that substantially affects the building code requirements, the ~~municipality or county~~, city, or town may impose the full examination fee permitted under 50-60-106."

Section 16. Section 50-60-302, MCA, is amended to read:

"50-60-302. Certification of ~~municipal and county~~, city, or town building codes. (1) A county, ~~or municipality~~ city, or town may not enforce a building code unless:

(a) the code enforcement program has been certified by the department as in compliance with applicable statutes and department certification rules;

(b) the current adopted code, a current list of fees to be imposed, and a current plan for enforcement of the code have been filed with and approved by the department; and

(c) all inspectors inspecting or approving any installations, which if accomplished commercially require state licensure, must themselves be properly and currently state-licensed as journeymen in that craft or occupation or be certified by a nationally recognized entity for testing and certification of inspectors that is approved by the department before being permitted to inspect or approve any installations.

(2) The department shall adopt additional rules and standards governing the certification of ~~municipal and county~~, city, and town building code enforcement programs that must include provisions for prompt revocation of certification for refusal or failure to comply with any applicable statute or rule. The department may allow a county, ~~or municipality~~ city, or town a reasonable amount of time, not to exceed 6 months, to correct identified code enforcement program deficiencies, unless the deficiencies constitute an immediate threat to the public health, safety, or welfare, in which case the department may require immediate correction. Failure to correct deficiencies within the time set by the department constitutes a basis for immediate decertification of the code enforcement program. Continued operation of a county, ~~or municipal~~ city, or town code enforcement program in violation of a department order to correct deficiencies may be enjoined or subject to a writ of mandamus by a judge of the district court in the jurisdiction in which the county, ~~or municipality~~ city, or town is located. The rules and standards must include provisions for the department to ensure that all code enforcement program functions are being properly performed.

(3) If the certification of any local government code enforcement program is revoked for any violation or deficiency, the state resumes its original jurisdiction for state building code enforcement within the ~~municipal or~~

county, city, or town area and the local government retains the responsibility for completion of inspections and issuance of certificates of occupancy on any incomplete construction projects previously permitted by the ~~local government~~ county, city, or town, unless the reason for the decertification is directly related to the protection of health, safety, and welfare of the public.

(4) If a ~~local government~~ county, city, or town voluntarily decertifies its code enforcement program, the department must be given written notification of the intended decertification at least 90 days prior to the date of decertification. The ~~local government~~ county, city, or town retains the responsibility for completion of inspections and issuance of certificates of occupancy on any incomplete construction projects permitted by the ~~local government~~ county, city, or town prior to decertifying its code enforcement program."

Section 17. Section 50-60-303, MCA, is amended to read:

"50-60-303. ~~Municipal and county~~ County, city, or town appeal procedure. (1) If a ~~municipality or~~ county, city, or town adopts a building code, it shall also establish an appeal procedure by ordinance or resolution, as appropriate, that is acceptable to the department.

(2) If a ~~municipality or~~ county, city, or town does not adopt a code, appeals on the application of the state building code within the ~~municipal or~~ county, city, or town ~~jurisdictional area~~ must be made to the department."

Section 18. Section 50-60-404, MCA, is amended to read:

"50-60-404. Enforcement of building construction standards for modular homes. (1) The provisions of this chapter apply to factory-built modular or prebuilt homes or buildings.

(2) A ~~municipality~~ county, city, or town may regulate the construction of factory-built modular or prebuilt homes or buildings as provided in 50-60-106 if:

- (a) the homes or buildings are constructed inside the jurisdiction of the ~~municipality~~ county, city, or town;
- (b) the homes or buildings are sold primarily to persons in the county in which the factory is located;
- (c) the factory does not manufacture more than 100 homes or buildings a year; and
- (d) the ~~municipality~~ county, city, or town has an agency or officer assigned to inspect and enforce building construction standards.

(3) Inspection and enforcement approval given by a ~~municipality~~ county, city, or town under this section may be recognized and accepted by any other ~~municipality~~ county, city, or town of the state to which the factory-built home or building is transported for final installation. Additional inspections need not be conducted."

Section 19. Section 50-60-506, MCA, is amended to read:

"50-60-506. Exceptions to permit requirement. (1) ~~No~~ A permit is not required for any minor replacement or repair work, the performance of which does not have a significant potential for creating a condition hazardous to public health and safety.

(2) ~~No~~ A permit is not required where the installation is exempt under the provisions of 37-69-102 or 50-60-503.

(3) ~~No~~ A state permit is not required whenever the installation occurs in an area governed by a ~~municipality~~ county, city, or town and where there is in effect a ~~municipal~~ county, city, or town building code ~~which~~ that covers plumbing installations and ~~which~~ that provides inspection procedures.

(4) ~~Nothing contained in this~~ This part shall ~~does not~~ prohibit the owner of residential property from making an installation for all sanitary plumbing and potable water supply piping without a permit ~~providing he if~~ the owner personally does the work ~~himself~~.

(5) The provisions of this part do not apply to regularly employed maintenance personnel doing maintenance work on the business premises of their employer unless the work is subject to the permit provisions of this part."

Section 20. Section 50-60-510, MCA, is amended to read:

"50-60-510. Inspections to ensure compliance. All plumbing and drainage systems may be inspected by the department of labor and industry or an authorized representative or ~~by a municipality or~~ county, city, or town certified to perform an inspection pursuant to 50-60-302 in order to ensure compliance with the requirements of the state plumbing code. As part of any inspection, the inspector shall request proof of licensure from any person who is required to be licensed who is involved with or, in the inspector's judgment, appears to be involved with plumbing activities if the person is on the site. The inspector shall report any instance of license violation to the inspector's employing agency, and the employing agency shall in turn report the violation to the board of plumbers."

Section 21. Section 50-60-604, MCA, is amended to read:

"50-60-604. Inspections -- electrical permits -- fees. The department of labor and industry or an authorized representative or a ~~municipality or~~ county, city, or town certified to perform an inspection pursuant to 50-60-302 shall inspect electrical installations, issue electrical permits for these installations, and establish and

charge a reasonable and uniform fee for the inspections. The fee must be commensurate with the expense of providing the inspection and with appropriations for other purposes. As part of any inspection, the inspector shall require proof of licensure from any person who is required to be licensed who is involved with or, in the inspector's judgment, appears to be involved with electrical installations if the person is on the site. The inspector shall report any instance of license violation to the inspector's employing agency, and the employing agency shall in turn report the violation to the board of electricians."

Section 22. Section 50-60-605, MCA, is amended to read:

"50-60-605. Power supplier not to energize installation without electrical permit. Individuals, firms, cooperatives, corporations, or municipalities selling electricity are power suppliers. Except for temporary connections that the department of labor and industry may authorize by rule for a period not exceeding 14 days without a preconnection inspection, power suppliers may not connect with or energize an electrical installation under this part unless the owner or a licensed electrical contractor has delivered to the power supplier an electrical permit covering the installation, issued by the department of labor and industry or a ~~municipality or~~ county, city, or town certified to enforce the electrical code pursuant to 50-60-302."

Section 23. Section 50-60-607, MCA, is amended to read:

"50-60-607. Energizing electrical installation without permit -- misdemeanor. Any person, partnership, company, firm, association, or corporation, other than a power supplier, that energizes an electrical installation under this part for which an electrical permit has not been issued by the department of labor and industry or a ~~municipality or~~ county, city, or town certified to enforce the electrical code pursuant to 50-60-302 is guilty of a misdemeanor."

Section 24. Area of applicability of county, city, or town building code -- enforcement. (1) A city or town that adopts a building code under this chapter may enforce its building code only within the incorporated limits of the city or town.

(2) A county may adopt a building code under this chapter on a countywide basis unless a city or town within the county has adopted a building code. If a city or town within the county has adopted a building code, then the county may not enforce the county building code in that city or town.

(3) A county, city, or town may contract for the enforcement of its building code.

Section 25. Transition. (1) A municipality is responsible for completing inspections that are required for those building, electrical, plumbing, and mechanical permits issued by the municipality in an extended jurisdictional area prior to October 1, 2003.

(2) A project in an extended jurisdictional area that required a building permit prior to October 1, 2003, is subject to city or town jurisdiction until the project is completed. A municipality may not apply its building code to a new project after October 1, 2003.

(3) A county that has not adopted a building code prior to [the effective date of this section] may adopt a building code, but the building code may not be effective before October 1, 2003.

Section 26. Repealer. Sections 50-60-310, 50-60-311, 50-60-312, 50-60-313, and 50-60-314, MCA, are repealed.

Section 27. Codification instruction. [Section 24] is intended to be codified as an integral part of Title 50, chapter 60, part 3, and the provisions of Title 50, chapter 60, part 3, apply to [section 24].

Section 28. Effective dates. (1) Except as provided in subsection (2), [this act] is effective October 1, 2003.

(2) [Section 25 and this section] are effective on passage and approval.

- END -

I hereby certify that the within bill,
HB 0640, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2019.

President of the Senate

Signed this _____ day
of _____, 2019.

HOUSE BILL NO. 640

INTRODUCED BY HAINES, WANZENRIED

AN ACT REVISING LOCAL GOVERNMENT BUILDING CODE AUTHORITY; ELIMINATING THE ABILITY OF A COUNTY TO DESIGNATE A PORTION OF A COUNTY OUTSIDE OF A CITY OR TOWN AS THE COUNTY JURISDICTIONAL AREA; ELIMINATING ELECTION REQUIREMENTS RELATED TO BUILDING CODES; REVISING DEFINITIONS AND THE USE OF DEFINED TERMS; PROVIDING A TRANSITION PERIOD CONCERNING JURISDICTION; AMENDING SECTIONS 13-19-106, 50-3-103, 50-60-101, 50-60-102, 50-60-106, 50-60-107, 50-60-109, 50-60-110, 50-60-115, 50-60-118, 50-60-205, 50-60-211, 50-60-212, 50-60-213, 50-60-301, 50-60-302, 50-60-303, 50-60-404, 50-60-506, 50-60-510, 50-60-604, 50-60-605, AND 50-60-607, MCA; REPEALING SECTIONS 50-60-310, 50-60-311, 50-60-312, 50-60-313, AND 50-60-314, MCA; AND PROVIDING EFFECTIVE DATES.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on February 21, 2003 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Jim Keane, Vice Chairman (D)
Rep. Donald Steinbeisser, Vice Chairman (R)
Rep. Bob Bergren (D)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Ray Hawk (R)
Rep. Bob Lawson (R)
Rep. Rick Maedje (R)
Rep. Gary Matthews (D)
Rep. Scott Mendenhall (R)
Rep. Penny Morgan (R)
Rep. Allen Rome (R)
Rep. Sandy Weiss (D)
Rep. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Pamela Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. The time stamp for these minutes appears at the end of the content it refers to.

Committee Business Summary:

Hearing & Date Posted: HB 631, HB 640, HB 646, HB 648,
2/14/2003

Executive Action: HB 606-Tabled, HB 634-Tabled, HB 638-Tabled, HB 631-Do Pass and also Placed on the Consent Calendar, HB 640-Do Pass, HB 648-Do Pass As Amended

HEARING ON HB 640

Sponsor: REP. DICK HAINES, HD 63, Missoula, Montana

Opening Statement by Sponsor:

REP. HAINES opened the hearing on HB 640 by describing it as the "donut bill." He further stated that this is an issue of where the landowners are in a situation of "taxation without representation." The landowners must pay fees for inspection for new homes being built, however they are not allowed to vote in the city as they are residents in the county.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 189}

Proponents' Testimony:

Bruce Simons, Citizen, spoke to the Committee about the concept discussed last session of eliminating the jurisdiction of the City over the County such as what the "donut" issue is all about.

He spoke to the Committee about the legal battles that ensued over this issue since last session.

{Tape: 1; Side: A; Approx. Time Counter: 189 - 265}

Bobby Rossignol, Citizen, spoke to the Committee about the problems her family have experienced in the building of their home in Lolo, Montana. She also testified to the Committee about the legal battles between them and the City of Missoula.

EXHIBIT (buh39a01)

EXHIBIT (buh39a02)

{Tape: 1; Side: A; Approx. Time Counter: 265 - 394}

Stephanie Oblander, Citizen, testified about "due process claims."

{Tape: 1; Side: A; Approx. Time Counter: 394 - 464}

Steve White, Rancher, informed the Committee that this is the sixth session that he, personally, has been embroiled in the bill.

Mr. White was in the process of constructing an out-building on his ranch when this legal battle initiated. The amount of money that he has spent is over \$10,000 in trying to get resolution on this matter.

EXHIBIT (buh39a03)

{Tape: 1; Side: A; Approx. Time Counter: 464 - 500}

{Tape: 1; Side: B; Approx. Time Counter: 0 - 40}

Roger Halvert, Montana Association of Realtors, spoke in support of this bill.

{Tape: 1; Side: B; Approx. Time Counter: 40 - 47}

REP. WANZENREID, HD 68, Missoula, Montana, stated to the Committee that the City of Missoula is a "donut city." He spoke about his constituents not knowing that they need to acquire building permits; therefore, they do not know if they would be arrested for not having a permit. "Fairness and equity is the issue," stated **REP. WANZENREID**.

{Tape: 1; Side: B; Approx. Time Counter: 47 - 77}

Gertrude Stevens, Citizen, spoke to the Committee about the problems she and her family have faced since trying to construct a home in the Missoula area.

{Tape: 1; Side: B; Approx. Time Counter: 77 - 139}

Opponents' Testimony:

Byron Roberts, Montana Building Industry Association, stated to the Committee that if this bill is made into statute, the bill would eliminate the enforcement of codes. There would be procedural disparity.

{Tape: 1; Side: B; Approx. Time Counter: 139 - 176}

Bruce Bender, Missoula Public Works, spoke to the Committee about the problems that there would be in construction if no codes were enforced in the "donut" areas.

EXHIBIT (buh39a04)

EXHIBIT (buh39a05)

{Tape: 1; Side: B; Approx. Time Counter: 176 - 253}

Frank Odermann, Billings Fire Department, Montana State Fire Chiefs Association, testified to the Committee that the issue is the safety of the public and the safety of fire fighters that would be jeopardized if this bill is enacted. He stated that most deaths and injuries occur in residential fires.

EXHIBIT (buh39a06)

{Tape: 1; Side: B; Approx. Time Counter: 253 - 312}

Pat Clinch, Montana State Council of Professional Fire Fighters, stated that this bill would eliminate code enforcement for areas outside of the city limits.

{Tape: 1; Side: B; Approx. Time Counter: 312 - 328}

Alec Hansen, Montana League of Cities and Towns, testified to the Committee that contrary to what has been testified to, his organization did not file the suit that the proponents have accused them of doing. The reason why the cities filed suit was because of their concern for public safety and consumer protection. **Mr. Hansen** proposed a solution to the situation by saying that the cities allow the counties to have partial jurisdiction.

{Tape: 1; Side: B; Approx. Time Counter: 328 - 445}

Carl Schweitzer, Association of Plumbing and Heating Contractors, spoke to the Committee about the health and safety issues that would be affected by this bill.

{Tape: 1; Side: B; Approx. Time Counter: 445 - 495}

Neil Poulsen, City of Bozeman Building Department, stated to the Committee that the only problem with this bill is the portion that takes away the counties' ability to have jurisdiction in the portion of their area.

EXHIBIT (buh39a07)

{Tape: 1; Side: B; Approx. Time Counter: 495 - 500}

{Tape: 2; Side: A; Approx. Time Counter: 0 - 11}

Craig Kerzman, City of Kalispell Building Department, spoke to the Committee, that Kalispell has an extra-territorial area and since its inception, there has been code enforcement in these areas.

EXHIBIT (buh39a08)

EXHIBIT (buh39a09)

{Tape: 2; Side: A; Approx. Time Counter: 11 - 19}

Informational Testimony:

Jim Brown, State of Montana, Department of Labor and Industry, stated to the Committee that his department will answer any questions that the Committee may have.

{Tape: 2; Side: A; Approx. Time Counter: 19 - 28}

Questions from Committee Members and Responses:

REPS. WEISS, GALLIK, MATTHEWS, BERGREN, MAEDJE, asked numerous questions of Bill Jellingson, State of Montana Department of Labor and Industry, Mr. Simon, Mr. Brown, Mr. Clinch and Mr. Bender. Among the questions asked were: what is the inspection protocol, permitting process, due process, fire fighting hazards and procedures, risks for firefighters and the process for handling violations.

{Tape: 2; Side: A; Approx. Time Counter: 28 - 283}

Closing by Sponsor:

REP. HAINES stated to the Committee that there were many mis-statements heard in the hearing of this bill and that HB 640 will "Give a people a say in enforcement."

{Tape: 2; Side: A; Approx. Time Counter: 283 - 339}

HEARING ON HB 631

Sponsor: REP. BOB LAKE, HD 60, Hamilton, Montana

Opening Statement by Sponsor:

REP. LAKE opened the hearing on HB 631 by stating to the Committee that this bill will clear up an inconsistency between the Department of Revenue, administrative rules and the Montana Statutes as they pertain to procedures required to establish default on the secured liquor license. The experts will further explain the bill to them.

{Tape: 2; Side: A; Approx. Time Counter: 339 - 355}

Proponents' Testimony:

George Bennett, Montana Bankers Association, stated to the Committee that this is a very simple bill that will correct what was enacted in 1999. The Department of Revenue had recognized as a default a foreclosure under the Uniform Commercial Code (UCC). In the event of a default, the UCC has various protections for the tavern owner.

EXHIBIT (buh39a10)

{Tape: 2; Side: A; Approx. Time Counter: 355 - 380}

Neil Peterson, State of Montana, Department of Revenue, informed the Committee that this bill will insert the necessary provisions required to resolve what was enacted in 1999.

{Tape: 2; Side: A; Approx. Time Counter: 380 - 386}

Keith Colbo, Montana Independent Bankers, spoke in support of this bill.

{Tape: 2; Side: A; Approx. Time Counter: 386 - 387}

Emil Erhardt, Citizens' State Bank, informed the Committee that this issue was brought to the attention of the Montana Banker's Association due to a sale of a casino in that area.

EXHIBIT (buh39a11)

{Tape: 2; Side: A; Approx. Time Counter: 387 - 415}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

CHAIRMAN MCKENNEY inquired of Mr. Peterson to supply the committee of an example that would be relevant to this issue.

{Tape: 2; Side: A; Approx. Time Counter: 415 - 460}

Closing by Sponsor:

REP. LAKE closed the hearing on HB 631.

{Tape: 2; Side: A; Approx. Time Counter: 460 - 500}

HEARING ON HB 648

Sponsor: REP. CINDY YOUNKIN, HD 28, Bozeman, Montana

Opening Statement by Sponsor:

REP. YOUNKIN opened the hearing on HB 648 by explaining that this is a bill that would allow the sellers of genetic material for artificial insemination to procure a lien on the breeders for said material in lieu of nonpayment of fees. The bill may require amendments for Page 1, Lines 15-17; Page 1, Line 26-30; and Page 4, new Section 4.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 60}

Proponents' Testimony:

Jane Mersen, Rancher, Attorney, explained to the Committee what a rancher supplies for the artificial insemination of cattle, the fees that are involved, the nonpayment of fees and the remedies to collect those fees that are currently allowed. Ms. Mersen also informed the Committee of the time frame needed for a successful insemination and the subsequent timely collection of fees.

{Tape: 2; Side: B; Approx. Time Counter: 60 - 146}

George Bennett, Montana Bankers Association, stated to the Committee that the Agricultural lenders that his association is involved with are willing to work with the rancher in the collection of those delinquent fees.

EXHIBIT (buh39a12)

{Tape: 2; Side: B; Approx. Time Counter: 146 - 179}

Steve Pilcher, Montana Stockgrowers Association, rose in support of HB 648.

{Tape: 2; Side: B; Approx. Time Counter: 179 - 198}

Tim Gill, Montana Livestock Agriculture Credit Union, stated to the Committee that his organization is "guardedly" in support of this bill.

{Tape: 2; Side: B; Approx. Time Counter: 198 - 223}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REPS. MORGAN, WEISS, KEANE, STEINBEISSER, BOOKOUT-REINECKE, AND MAEDJE asked several questions of the sponsor and proponents about the time frame suggested for the filing of liens, collateral value, the "ag" lenders and the future value of the embryos and semen.

{Tape: 2; Side: B; Approx. Time Counter: 223 - 500}

Closing by Sponsor:

REP. YOUNKIN closed the hearing on HB 648 by stating to the Committee that the lien that would be filed is on the genetic material not the cow. The suppliers of this genetic material need to have a "tool" to recover the monies owed them.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 26}

HEARING ON HB 646

Sponsor: REP. EVE FRANKLIN, HD 42, Great Falls, Montana

Opening Statement by Sponsor:

REP. FRANKLIN opened the hearing on HB 646 by stating to the Committee that this is a bill that affects the people who use deferred deposit lenders; i.e., post-dated check lenders. The sponsor listed the changes that this bill would make in the statute.

{Tape: 3; Side: A; Approx. Time Counter: 26 - 150}

Proponents' Testimony:

Matt Leow, Montana Public Interest Research Group, spoke to the Committee about what his organizations terms "usury" loans and the terms of those loans.

{Tape: 3; Side: A; Approx. Time Counter: 150 - 220}

Mary Cafero, WEEL, spoke in support of this bill. The organization that she represents desires that this industry comply with what other lenders must comply with.

{Tape: 3; Side: A; Approx. Time Counter: 220 - 256}

Betty Whitney, Montana Association of Churches, informed the Committee what her organization recommends and asked the question, "What is fair?"

{Tape: 3; Side: A; Approx. Time Counter: 256 - 355}

Opponents' Testimony:

Bernie Harrington, Montana Financial Services Organization, spoke to the Committee about the regulation that this organization is in full support of, explained the charges that lenders of this organization may receive, time periods for repayment, repeat borrowers and the APR that is charged.

EXHIBIT (buh39a13)

{Tape: 3; Side: A; Approx. Time Counter: 355 - 500}

{Tape: 3; Side: B; Approx. Time Counter: 0 - 52}

John Cameron, Title Cash of Montana, explained to the Committee how this type of lender becomes involved.

{Tape: 3; Side: B; Approx. Time Counter: 52 - 121}

J.D. Lynch, Montana Financial Service Centers, spoke in opposition to this bill.

{Tape: 3; Side: B; Approx. Time Counter: 121 - 143}

Riley Johnson, Community Financial Services Association, spoke in opposition to this bill.

{Tape: 3; Side: B; Approx. Time Counter: 143 - 149}

Robin Adams, Quick Check, spoke in opposition to this bill.

{Tape: 3; Side: B; Approx. Time Counter: 149 - 185}

Cyndy Edward, Express Check Cashing, spoke in opposition to this bill.

{Tape: 3; Side: B; Approx. Time Counter: 185 - 192}

Scott Michels, Red D Cash, spoke in opposition to this bill.

{Tape: 3; Side: B; Approx. Time Counter: 192 - 205}

Jerry Michels, Red D Cash, spoke in opposition to this bill.

{Tape: 3; Side: B; Approx. Time Counter: 205 - 210}

SEN. MANGAN, HD 23, Great Falls, Montana spoke in opposition to this bill.

{Tape: 3; Side: B; Approx. Time Counter: 210 - 254}

Heather Rohlf, Quick Check, spoke in opposition to this bill.

{Tape: 3; Side: B; Approx. Time Counter: 254 - 260}

Denise Knutson, Quick Check, spoke in opposition to this bill.

{Tape: 3; Side: B; Approx. Time Counter: 260 - 267}

Informational Testimony:

Chris Olson, State of Montana, Department of Administration, explained to the Committee that this agency licenses these entities. Mr. Olson offered an amendment to this bill and explained the amendment to the Committee.

EXHIBIT (buh39a14)

{Tape: 3; Side: B; Approx. Time Counter: 267 - 341}

Questions from Committee Members and Responses:

REP. GALVIN-HALCRO asked Mr. Harrington a question regarding protection for consumers going from one lender to another, etc.

{Tape: 3; Side: B; Approx. Time Counter: 341 - 376}

Closing by Sponsor:

REP. FRANKLIN closed the hearing on HB 646.

{Tape: 3; Side: B; Approx. Time Counter: 376 - 500}

EXECUTIVE ACTION ON HB 606

Motion: REP. BERGREN moved that HB 606 DO PASS.

Discussion:

REPS. KEANE and GALLIK commented on this bill.

Motion/Vote: REP. LAWSON moved that HB 606 BE TABLED. Motion carried unanimously. (roll call vote)

{Tape: 4; Side: A; Approx. Time Counter: 0 - 42}

EXECUTIVE ACTION ON HB 631

Motion/Vote: REP. MAEDJE moved that HB 631 DO PASS. Motion carried unanimously. (voice vote)

Motion/Vote: REP. MATTHEWS moved HB 631 be moved to the Consent Calendar. Motion carried unanimously. (voice vote)

{Tape: 4; Side: A; Approx. Time Counter: 42 - 56}

EXECUTIVE ACTION ON HB 638

Motion: REP. BITNEY moved that HB 638 DO PASS.

Discussion:

REPS. MAEDJE, MENDENHALL AND GALLIK discussed the bill briefly.

Vote: Motion that HB 638 DO PASS failed 6-12 with REPS. FRITZ, GALLIK, GALVIN-HALCRO, KEANE, WEISS, and WILSON voting aye. (roll call vote)

Vote: Motion that HB 638 BE TABLED AND THE VOTE REVERSED carried 12-6 with REPS. FRITZ, GALLIK, GALVIN-HALCRO, KEANE, WEISS, and WILSON voting no. (voice vote)

{Tape: 4; Side: A; Approx. Time Counter: 56 - 137}

EXECUTIVE ACTION ON HB 634

Motion: REP. GALLIK moved that HB 634 DO PASS.

Discussion:

REP. GALLIK discussed Section 3 of the bill.

Substitute Motion/Vote: REP. BITNEY made a substitute motion that HB 634 BE TABLED. Substitute motion carried 15-3 with REPS. FRITZ, GALLIK, and WEISS voting no. (roll call vote)

{Tape: 4; Side: A; Approx. Time Counter: 137 - 183}

Please Note: This Committee adjourned to attend the Floor Session; but reconvened at 2:07 p.m.

EXECUTIVE ACTION ON HB 640

Motion: REP. BOOKOUT-REINICKE moved that HB 640 DO PASS.

Discussion:

There was much discussion among the Committee members about HB 640. REPS. MORGAN, MATTHEWS, BITNEY, GALLIK, BOOKOUT-REINICKE, KEANE, MAEDJE and ROME questioned and commented on the public safety issue, the "donut" areas in question and affordable housing.

Vote: Motion that HB 640 DO PASS carried 13-5 with REPS. BITNEY, FRITZ, GALLIK, GALVIN-HALCRO, and WILSON voting no. (roll call vote)

{Tape: 4; Side: A; Approx. Time Counter: 183 - 375}

EXECUTIVE ACTION ON HB 648

Motion: REP. BERGREN moved that HB 648 DO PASS.

Motion: REP. KEANE moved that HB 648 BE AMENDED.

Discussion:

REPS. KEANE and LAWSON commented on the language on Page 1, Lines 29-30 and Page 2, Line 27.

Vote: Motion that HB 648 BE AMENDED carried unanimously. (voice vote)

Motion: REP. KEANE moved that HB 648 BE AMENDED.

Discussion:

REPS. KEANE, STEINBEISSER, MORGAN, BOOKOUT-REINICKE, BERGREN, HAWK, GALLIK, MAEDJE and MENDENHALL discussed the amendment that addressed the "80 days" amendment.

Vote: Motion that HB 648 BE AMENDED failed 9-9 with REPS. BOOKOUT-REINICKE, GALLIK, GALVIN-HALCRO, HAWK, LAWSON, MAEDJE, MATTHEWS, ROME, and STEINBEISSER voting aye. (roll call vote)

Motion: REP. KEANE moved that HB 648 BE AMENDED.

Discussion:

The discussion among the Committee members was now about the "120 days" amendment.

Vote: Motion that HB 648 BE AMENDED carried 15-3 with REPS. LAWSON, MAEDJE, and STEINBEISSER voting no. (roll call vote)

Motion/Vote: REP. KEANE moved that HB 648 DO PASS AS AMENDED. Motion carried unanimously. (roll call vote)

{Tape: 4; Side: A; Approx. Time Counter: 375 - 500}

{Tape: 4; Side: B; Approx. Time Counter: 0 - 300}

ADJOURNMENT

Adjournment: 3:10 P.M.

REP. JOE MCKENNEY, Chairman

PAMELA SCHINDLER, Secretary

JM/PS

EXHIBIT (buh39aad)

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **SENATOR VICKI COCCHIARELLA**, on March 24, 2003
at 9:06 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Sherm Anderson (R)
Sen. Vicki Cocchiarella (D)
Sen. Kelly Gebhardt (R)
Sen. Ken (Kim) Hansen (D)
Sen. Sam Kitzenberg (R)
Sen. Glenn Roush (D)
Sen. Don Ryan (D)
Sen. Carolyn Squires (D)

Members Excused: Sen. Bob Keenan (R)
Sen. Dale Mahlum, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Sherrie Handel, Committee Secretary
Eddy McClure, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 507, 2/24/2003; HB 385,
2/24/2003; HB 640, 3/7/2003; HB
410, 2/22/2003
Executive Action: HB 507

{Tape: 1; Side: A}

HEARING ON HB 507

Sponsor: REPRESENTATIVE JOHN BRUEGGEMAN, HD 74, POLSON

Proponents: Jerry Keck, Employment Relations Division,
Department of Labor and Industry

Opponents: None

Opening Statement by Sponsor:

REPRESENTATIVE JOHN BRUEGGEMAN, HD 74, POLSON, stated this is a very simple bill that will change one word from "may" to "shall."

Proponents' Testimony:

Jerry Keck, Employment Relations Division, Department of Labor and Industry, indicated that a legislative audit determined that state rules regarding child labor laws had not been adopted. They are following the legislative audit by making this change.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

SEN. KELLY GEBHARDT discussed with Mr. Keck the statement that there hadn't been any problems. He wanted to know why this change came about. Mr. Keck answered that it was due to the recommendations from the legislative audit. SEN. GEBHARDT stated he just wanted to make sure there weren't any children or parents complaining.

Closing by Sponsor:

REP. BRUEGGEMAN closed by saying this is a simple, clarifying bill. The actual issue is that there is a simple rules discrepancy.

SEN. VICKI COCCHIARELLA indicated that SEN. SHERM ANDERSON was willing to carry HB 507 should it pass through this committee.

HEARING ON HB 385

Sponsor: REPRESENTATIVE NANCY FRITZ, HD 69, MISSOULA

Proponents: Cort Jensen, Montana State Department of Consumer Protection; Dale Smiley, Montana Motorcycle Safety Advisory Committee and Montana Motorcycle Association; Steve Turkiewicz, Montana Auto Dealers;

Opponents: None

Opening Statement by Sponsor:

REPRESENTATIVE NANCY FRITZ, HD 69, MISSOULA, said this bill changes the lemon law in two ways. It would cover not only new vehicles purchased in this state, but also new vehicles purchased in another state and registered for the first time in Montana. Montana's Lemon Law says that after four repairs of the same malfunction on a new car that seriously affects its value or safety, the owner is allowed an arbitration hearing to decide if the vehicle manufacturer should buy back the vehicle. Three people arbitrate--one representing the automobile manufacturer, one representing the purchaser, and the third representing the Office of Consumer Affairs. The hearing would be mainly to determine that the law applies, that the vehicle has less than 18K miles, was owned for less than two years, and that it had not been abused or involved in an accident that caused the malfunction. **REP. FRITZ** shared that a constituent asked her to carry the bill. She purchased a car in Washington, a car not available in Montana. The car turned out to be a lemon. She called the Montana Attorney General's Office and was told the car was not covered under Montana law, because it was not purchased here. She then called the Office of the Attorney General in Washington and was told her car was not covered under their lemon law because it was not registered there. This bill would rescue such Montanans from lemon law purgatory. **REP. FRITZ** presented two amendments on behalf of the Department of Consumer Affairs, **EXHIBIT (bus62a01)**, and **EXHIBIT (bus62a02)**. The first amendment adds motorcycles to the list of covered vehicles. The second amendment lowers the number of state arbitrators on a hearing from three to one. She asked for this amendment for two reasons. First, the state has had a hard time finding willing arbitrators. Second, this would save the state over \$1K.

Proponents' Testimony:

Cort Jensen, Montana Department of Consumer Protection, supported the bill and amendments wholeheartedly. Luckily, manufacturers

of cars and motorcycles have filled in the gaps on these issues; however, there are lawyers who would prefer that gaps not exist. The three arbitrator rule, while initially seeming like a good idea, when he talked to the car manufacturers and consumers, they found it hard to find people willing to do it. It saves the state a little bit of money and a lot of time.

Dale Smiley, Montana Motorcycle Safety Advisory Committee and Montana Motorcycle Association, was present to support the bill, but particularly those parts that dealt with motorcycles. He said that if you have a \$27K Yugo in this state, the lemon law applies to you; however, if you have a \$30K Harley-Davidson motorcycle, it does not. The motorcycle manufacturers are not opposed to the bill as they do not want bad vehicles out in the public either. It helps Montana dealers when bad vehicles are off of the road.

Steve Turkiewicz, Montana Auto Dealers, rose in support of HB 385. He explained that this bill recognizes that all Montanans should be protected by the lemon law, whether they bought the vehicle in state or out of state. He emphasized that the arbitration change recognizes the rural nature of Montana. He urged the committee's do concurrence.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

SEN. VICKI COCCHIARELLA wanted to know how Montana's Lemon Law is enforced in another state. **Mr. Jensen** replied that, as long as the new vehicle's first registration was in Montana, even though it was purchased in another state, it would be covered by Montana's Lemon Law.

SEN. KELLY GEBHARDT questioned **Mr. Jensen** about purchasing a vehicle in Helena and then moving to Washington. He asked if that person could come back to Montana to utilize the Lemon Law, to which **Mr. Jensen** replied in the affirmative.

Closing by Sponsor:

REP. FRITZ stated that **SEN. DAN HARRINGTON** had sponsored the original Lemon Law and had agreed to carry this bill, should it be passed out of this committee.

HEARING ON HB 410

Sponsor: REPRESENTATIVE CINDY YOUNKIN, HD 28, BOZEMAN

Proponents: Cary Hegreberg, Montana Contractors Association;
Jerry Driscoll, AFL/CIO; George Wood, Montana
Self-Insurers Association; Jacqueline Lenmark,
American Insurance Association

Opponents: None

Informational Witnesses:
Nancy Butler, Montana State Fund; Kevin Braun,
Montana State Department of Labor and Industry

Opening Statement by Sponsor:

REPRESENTATIVE CINDY YOUNKIN, HD 28, BOZEMAN, explained that HB 410 arose out of a situation involving an employer who was giving an incentive payment to employees who were traveling to work sites that were distant from Bozeman. He gave about \$10 or \$20 per day for travel, although it was not the federal rate for mileage. There was a car accident in which someone died. As a result of that, it went through the Workers Compensation Court, which found that, while he was not within the scope of his employment, was covered by workers comp. The employer paid 60 percent of the employee's salary for the next ten years. The intention is not to pay employees while they are not within the scope of their employment. This bill went through several revisions in House committee. There were still concerns at that point with the way the bill was drafted. If you're just giving a small stipend for travel expenses and you punch out and stop for dinner on the way home, drive the other 30 miles home, and get into an accident, that is not within the scope of your course of employment. She shared that an amendment was being prepared at the time of this hearing. What it would do would take out "actual employment" on line 26 of page 1 and would go on to define at the top of page 2 that "reimbursement does not include payments or compensation made as an incentive to the employee who travels to and from a job site." Under the applicability section on line 18, where it says, "compensation filed," it would delete those words and add, "injuries that occur on or after ..." in order to not make it retroactive.

Proponents' Testimony:

Cary Hegreberg, Montana Contractors Association, rose in support of this bill and said it was the result of an accident injury incurred by an employee of one of their member companies. He

went on to say this matter caused a great deal of concern to this particular company owner and to all of their members, who, on occasion, pay a stipend or partial travel reimbursement for employees to go to somewhat remote work sites. He thought most of small Montana businesses may, on occasion, fill an employee's car gas tank or hand them a small amount of money to cover some of their travel costs. This bill would allow employers to continue to help employees in that way without getting caught in this precarious situation.

Jerry Driscoll, AFL/CIO, talked about travel on page 2. He said it is not really travel pay in construction. It is just a payment to get the employee there. If you use your camper trailer to live in the remote area, you still get the money. He used Colstrip as an example. There is no relationship on where the employee lives and the job site is located. His stated fear was that if the law is not amended with this bill, contractors will discontinue paying that tax-free money.

{Tape: 1; Side: B}

George Wood, Montana Self-Insurers Association, rose in support of the bill, but said it needs clarification. He discussed a person was traveling from Salt Lake City to Montana to apply for a specific job, was injured in a car accident in Dillon. The court determined he was in the course of his employment, because they anticipated if he got the job, he would be paid some travel benefits. Clarification is needed to indicate when the person is in the course of employment. His organization felt this bill as amended would do so.

Jacqueline Lenmark, American Insurance Association, rose in support of the bill and amendments as described by the sponsor.

Opponents' Testimony:

None

Informational Witness Testimony:

Nancy Butler, Montana State Fund, stated her main concern with the bill was that the language be clear enough that it can be administered without litigation. She said she would appreciate the committee's assistance with an amendment.

Kevin Braun, Department of Labor and Industry, discussed regulatory obligations under the Workers Compensation Act that his department has and offered his informational assistance.

Questions from Committee Members and Responses:

SEN. CAROLYN SQUIRES asked **Mr. Driscoll** about **REP. YOUNKIN'S** comments on working with labor and travel time. **Mr. Driscoll** replied in the negative.

SEN. DON RYAN addressed his scenario to **Mr. Driscoll**. **SEN. RYAN** said, hypothetically, you have a young person working for a contractor and the employer sends him and another man to a distant job using their own pickup carrying the employer's tools. The employer will pay these two young men \$15 to drive back and forth every day. The young men would be paid for eight hours on the job even though they drive back and forth several hours each way. **SEN. RYAN** asked **Mr. Driscoll** if it was okay not to charge workers comp if they get paid for driving back and forth. **Mr. Driscoll** explained it was illegal not to pay them by the hour in the example cited by **SEN. RYAN**. Telling an employee to put tools in their truck and take them to the job site would put the employee on the clock as soon as the employer orders it. **SEN. RYAN** wanted to know if **Mr. Driscoll** believed that, by passing this bill, there would be protection from workers comp claims; but, employers would push the ticket and it would open the door to putting more pressure on the employee to do it the way he described and could it lead to larger contractors outbidding smaller contractors near that job site by reducing the amount they pay people to go back and forth to work, thus allowing them to underbid the job. **Mr. Driscoll** agreed it could happen; however, it was not the intent of the law. He did feel, however, that employees could file a wage claim.

SEN. VICKI COCCHIARELLA inquired of **Ms. Butler** a situation wherein an employee is driving from home to Burger King to go to work or from Missoula to another town to teach. Would that employee be covered under workers comp? **Ms. Butler** answered that most states' workers comp laws do not cover an employee while traveling to and from work. She listed instances when an employee would be covered by workers comp, such as being paid partial or full mileage.

SEN. CAROLYN SQUIRES asked **Ms. Butler** about having to travel within your work hours or work day. She replied it would not always apply.

Closing by Sponsor:

REP. YOUNKIN stated this bill was intended to give employers an incentive to keep offering an incentive to employees. It helps for both the employer and employee. The payment for incentive

needs to be in a collective bargaining agreement or employee handbook.

HEARING ON HB 640

Sponsor: REPRESENTATIVE DICK HAINES, HD 63, MISSOULA

Proponents: REP. DAVE WANZENRIED, HD 68, MISSOULA; Bruce Simon, citizen from Billings; Bobbi Rosignoll of Lolo; Ann Mary Dussault, Missoula County Commissioner; Roger Halver, Montana Association of Realtors; Steve White of Bozeman; Ken Miller, former State Senator and citizen; Gilda Clancy, Eagle Forum; Harold Blattie, Montana Association of Counties

Opponents: Chuck Tooley, Mayor of Billings; Paul Gruber, Montana State Fire Chiefs' Association; Alec Hansen, Montana League of Cities; Mike Cadas, Mayor of Missoula; Byron Roberts, Montana Building Industry Association; Charles Brooks, Billings Area Chamber of Commerce; Pat Clinch, Montana State Firefighters, Neal Poulsen, City of Bozeman; Clark Johnson, City of Bozeman

Informational Witnesses:

Greg Petesch, Legislative Branch

Kevin Braun, Department of Labor and Industry

Opening Statement by Sponsor:

REPRESENTATIVE DICK HAINES, HD 63, MISSOULA, shared the long story of this "donut" bill. Montana law allows a city to have jurisdiction 4.5 miles outside of the city limits. He explained that Montana law gives cities building code authority up to 4.5 miles outside the boundaries of the municipality. Building code authority is the authority to enforce code to which the standard by which construction of the building must appear. The idea is that inspectors for the government entity that has the building code authority will inspect building construction that is underway and approve or disapprove of the construction work.

REP. HAINES then explained why we need a donut bill. It is because citizens within the donut area believe they are being regulated unfairly in a sloppy and haphazard manner and the regulations cost them money for which they receive little or no value. They have no place to protest nor seek relief from their difficulties. In fact, in some instances, the unfairness of the

situation is appalling, even to the point of some city actions appearing to be vindictive. He called it the case of the king versus the peasantry and stated if a regulatory fee can be considered a form of taxation, then it is a classic case of taxation without representation. It was the sole reason he carried the bill. To this point, citizens living outside the corporate boundaries of donut cities have fought since 1995 to end city building code authority beyond corporate limits. In 1999, a bill was passed ending city authority. It was vetoed and a veto override was short by three votes. In 2001, SB 242 was passed and was signed into law. The cities ignored the new statute and requested the Montana Supreme Court to accept the case to overturn SB 242. In the name of emergency, the court issued an injunction and took original jurisdiction of the case in December, 2001. For better than 14 months, the court did not make a decision. Cities were still regulating citizens in Montana in a manner that had no appeal process. Those citizens in those areas have no say, no vote, no appeal. The view of the Supreme Court by the donut cities claimed that allowing only property owners in potential donut areas could vote on whether or not there should be a donut area disenfranchised citizens who did not own property. On March 18, 2003, the Supreme Court made a decision and threw out all of SB 242. **REP. HAINES** told the committee they get "first crack" at the new donut bill. The bright light is that the Code Commissioner has written amendments that would make it a good law and would permit cities, counties and affected citizens to do things in a manner clear to all concerned.

{Tape: 2; Side: A}

He reminded the committee that the issue is taxation without representation and not public safety. In closing, **REP. HAINES** said all protestations of opponents could be taken care of by the procedures by the new procedures in HB 640.

Proponents' Testimony:

REP. DAVE WANZENRIED, HD 68, MISSOULA, asked the committee to take swift action on this bill and said the amendments to the bill are approximately 14 pages long. The amendments will take this bill and put it in a form that everyone can understand. He said we owe it to the people in all donut cities what the policy of this state is going to be regarding government building codes.

Informational Witness Testimony:

At the request of **CHAIRMAN DALE MAHLUM, Greg Petesch** explained the extensive amendments, **EXHIBIT (bus62a03)** (HB064001.agp) to the bill.

Proponents' Testimony:

Bruce Simon, citizen from Billings, testified as a proponent of the bill with the amendments. He stated it is a long-standing problem and constitutional issue that needs to be resolved. Allowing a city government to govern county residents is a violation of those county residents' constitutional rights. He went on to express his concerns with the amendments and the fact that some people who testify at hearings are not registered as lobbyists. **Mr. Simon** also explained several cases where county residents have had difficulties with building inspectors who enforced their building codes after the fact. He requested that the transition portion of the amendments reflect an effective date of May 1, 2003.

Bobbi Rosignoll of Lolo, rose in support of the bill in an effort to restore representation and equal protection to county residents and gave a history of her experience with this issue. She presented her written testimony, **EXHIBIT (bus62a04)**.

Ann Mary Dussault, Missoula County's Chief Administrative Officer, was present at the direction of the Missoula Board of Commissioners. The Board of Commissioners reviewed the amendments proposed by **REP. HAINES**, concurred with them, and asked **Ms. Dussault** to speak in favor of the bill today. They had two separate issues with this bill.

{Tape: 2; Side: B}

Roger Halver, Montana Association of Realtors, expressed his intent to leave the committee with the knowledge that his organization is, in no way, against coding. They are against coding without representation. He used the analogy of the Boston Tea Party as a comparison to this donut area issue. He encouraged the committee to pass the bill.

Steve White of Bozeman, stated his involvement in this issue since 1995. In 1995, SB 227 was introduced by **SEN. WELDON** to do away with the donut. Within five days of **Mr. White's** testimony in favor of that bill, he had a visit from the city of Bozeman building inspector, who drove outside the city limits and realized that **Mr. White** had a 1,200 square foot pole barn that had been built two years prior. This building inspector then left on his gate post a cease and desist order and told **Mr. White**

to go in and get a building permit from the city of Bozeman. He then contacted the state Department of Commerce and told them that **Mr. White** had an electrical tag put on his meter a year and a half prior, which should have been done by the city of Bozeman and not the state. The inspector demanded that the state revoke **Mr. White's** permit, which they did. The city of Bozeman then contacted Montana Power and said **Mr. White** did not have a permit for electricity and they should unplug **Mr. White's** electricity, which Montana Power did with only four hours notice. He was without power for ten days simply because the city of Bozeman had to go out and do an electrical inspection. The irony, he said, was that the electrical inspector for the state was a master electrician, and the one from the city of Bozeman was still doing paperwork to become an official inspector. Nevertheless, **Mr. White** had to give the city of Bozeman permit money. From that point on, he has built an outbuilding and house and has given the city of Bozeman \$2K in building permit. He expressed how hard it was to watch SB 227 go down in defeat that session. In 1997, **Mr. White** again traveled to Helena to testify in favor of **REP. SIMON'S** HB 388. In 1997, Bozeman, as well as other donut cities, have two donuts--a planning and zoning donut and a donut for building permits. All of a sudden, they lost their planning donut. Many people thought you didn't have to go to the city for your building permit, but that was not the case. HB 388 was amended down to the point where the original intent of it was taken away and the donut continued on. Once again, in 1999, he traveled to Helena for HB 91, which was brought forward by **REP. SIMON**. With a lot of hard work, that bill made it through. The governor vetoed the bill one day after the legislature ended, but called a special session of the legislature, when **Mr. White's** group fell three votes short of overriding the veto. In 2001, there were two bills--HB 457 by **REP. HAINES** and SB 242 by **SEN. O'NEILL**. He stated how important this bill was to him. The bottom line is that he and his family want to be done with the city. His family has owned their land before Bozeman was an incorporated town or city. While there is a lot of growth going on, there is a need for citizens to be free of the rule of jurisdiction in which they have no battle. He asked that the committee pass the amendments and explained how he felt the county could set up little pockets or areas where they could allow city folks to administer their building codes.

Ken Miller, former State Senator and citizen, shared his experience with the past bills enacted surround this donut issue. He emphasized that the cities should only have jurisdiction within the city limits and county government should set the same rules for all of those who live within their jurisdiction.

Gilda Clancy, Eagle Forum, stood before the committee in favor of this legislation and stated she thought it very clear that the intent of passing SB 242 was to eliminate the city's jurisdiction of the donut area.

Harold Blattie, Montana Association of Counties, came before the committee as a cautious proponent. His greatest concern was the countywide area enforcement of a building code and the requirement that, if the county chooses to adopt a building code countywide, the fire, sewer and water districts in unincorporated communities might like the increased building code enforcement.

Opponents' Testimony:

Chuck Tooley, Mayor of Billings, joined the Chamber of Commerce and Building Industry Association in opposing HB 640 as it stood. One principal that was discussed for years and led to the introduction of bills by previous legislators was the principal of taxation without representation. He stated the principal makes sense. Citizens who must comply with certain regulations or must pay certain taxes or fees should have the opportunity to vote for or against those officials who impose those regulations or costs. He submitted that principal could be addressed in such a way as to remove any valid protest about taxation without representation. If a county commission elected by the people of that county decides to inspect buildings under construction in their county to insure that they comply with the building code of the state of Montana, the residents of that county can register their opinions of that decision at the ballot box. There would be no issue of taxation without representation any longer. This bill removes that authority. He read from the draft of the bill, and said, "This is an act revising local government building code authority eliminating the ability of any county to designate a portion of a county outside a municipality as the county jurisdictional area." **Mr. Tooley** stated the state of Montana requires compliance with certain building codes, but does not have the resources to enforce those building codes in every corner of this state; therefore, if county commissioners decide they want to protect the health and safety of their residents by providing building inspections for the benefit of their residents, he agreed with what **Mr. Blattie** had said in his testimony. He asked the committee to leave it up to the counties to decide to see to the needs of their own residents instead of deciding for them what is best for them.

Paul Gruber, Montana State Fire Chiefs Association, stood in opposition to HB 640 as it was written. He believed that HB 640 would be detrimental to the enforcement of building codes in single family residences, duplexes, triplexes, and fourplexes

built outside of Montana's municipalities. He believes the counties need to have the flexibility to adopt building codes for portions of counties, not just the entire county. He stated his belief that county commissioners should be given flexibility to develop a process for adopting building codes for residential occupancies under fiveplexes. County commissioners need to be given the authority to enact a code enforcement program and to choose how that enforcement will be carried out. It was his experience that it is human nature for people to not want to be subjected to a code enforcement program; however, this willingness to be subjected to the mandates of a code is the price one pays to ensure that life safety requirements are met where we live, work, and play. It was his experience that when a disaster does occur as a result of building or fire codes, the citizens demand accountability of their elected officials wondering how they could have allowed an unsafe building to be built or occupied. This is the scene continually played out across the country when disaster strikes. The building code ensures that new single-family residences, duplexes, triplexes, and fourplexes have escape windows in sleeping areas, fire-rated sheet rock and solid-core doors between homes and attached garages and fire-rated sheet rock between separate dwelling units. If there were no code regulating the construction of residential occupancies, the safety of the public and responding firefighters would be jeopardized. Fire dollar loss would also inevitably rise due to the lack of code enforcement. He stated it is a statistical fact that rural areas experience a larger per capita loss because of fire than do urban areas. The residential structures in areas where fire department response time is relatively long need to be protected by more enforcement rather than less. **Mr. Gruber** quoted statistics surrounding fires and losses in residential homes in rural areas.

{Tape: 3; Side: A}

Alec Hansen, Montana League of Cities, stated this long-running disagreement was the result of what happens when the state tries to fix up or put a patch on a bad law. More than 20 years ago, a member of the legislature had a disagreement with a state building code requirement and persuaded the legislature to adopt a law that exempted anything with less than five dwelling units from the state building code. Subsequently, it was decided that the cities had effective code enforcement programs and that there had to be a way to buy inspection services (structural and life safety) in the fastest growing areas of the state. That's why, he said, they were here. He understood why individuals would object to paying for a city service when they do not live in the city and felt it had to be fixed. He suggested that counties be allowed to enforce building codes. He thought the legislature should trust the counties.

Mike Cadas, Mayor of Missoula, also was tired of being present for this issue and hoped the committee could get it resolved soon. His fundamental concern with the bill was that it doesn't allow counties to determine what the jurisdiction ought to be where the code would be applied. The reason for it is quite practical. There are a lot of parts of counties where there is very little happening and the economics of doing inspections in those areas would not pay. He gave Missoula as his example. They had 6,400 permits of all sorts in the city and donut area in FY02. In just the donut area, they had 490 permits, so about 25 percent of the permits were in that donut area. He would be happy to turn the donut areas over to the counties. **Mr. Cadas** also had concerns with the amendments. He thought you need to allow jurisdiction where the permit starts to complete the permit if this bill passes.

Byron Roberts, Montana Building Industry Association, sought the committee's help in defeating HB 640 the way it is currently written. This system of extraterritorial administration of building codes has been used in this country effectively for years. The bill would effectively eliminate code enforcement in the fastest growing areas in the state by requiring county-wide jurisdictions. He questions why. They allow counties to form districts for a multitude of purposes including sewer, water, fire, mosquito control and zoning. He felt building code enforcement districts could be formed the same way. He did not think counties would enforce building codes county wide due to the cost factor. If it did, it would become highly unlikely that cities and counties would jointly administer a program that would be county wide. The elimination of building inspections would have a noted impact on the cost of homeowners insurance. He also referred to the near impossibility of builders buying liability insurance and a lack of building code enforcement would affect this issue. Also, they continually encourage cities and counties to cut costs and bring about added efficiencies by working jointly, entering into local agreements, and sharing resources to administer programs. He felt that by allowing a county to designate a portion of the county would provide a very effective system of building code enforcement. Building codes are essential, but this bill is about eliminating building codes, so the Montana Building Industries Association urged the committee to vote no on HB 640 as currently written.

Charles Brooks, Billings Area Chamber of Commerce, told the committee his organization sees this as a major issue of local control. They also see the legislature stepping in and telling the county commissioners how they should run their business as elected officials. They feel this bill should be amended, giving the county the opportunity to set up sections within the county

for zones and it should be amended allowing those registered voters within that jurisdiction the opportunity to vote. He thought it was a sad day when the state steps in and tells local government how to run their business. They opposed the bill.

Pat Clinch, Montana State Council of Professional Firefighters, raised concerns about if fire codes would be next. Currently, many jurisdictions have extraterritorial areas in which his organization provides fire protection and code enforcement. They need to have more flexibility for local governments to decide what is best in that local community. Many times, a small, local community may be part of the county, but not the entire county.

Neil Poulsen, Building Official for the City of Bozeman, provided written testimony, **EXHIBIT (bus62a05)**.

Clark Johnson, Bozeman City Manager, gave the committee an example and emphasized that they are very anxious to be rid of this duty. They look forward to the county taking on their own responsibility of enforcing building codes and getting the city out of it. However, he hoped the committee would allow the counties to do it by area. **Mr. Johnson** pointed out that **Mr. White** does not live in Bozeman. In fact, he lives in the Valley Grove/Wiley Creek area. It's that same kind of grouping people together that has building codes that are legitimate in cities necessary for those populated areas.

Informational Witness Testimony:

Kevin Braun, Department of Labor and Industry, explained the transitional section. He said the reason that sentence is in there is because the state doesn't require permits for all of the permits currently being issued by those cities or municipalities.

{Tape: 3; Side: B}

Questions from Committee Members and Responses:

SEN. VICKI COCCHIARELLA asked **REP. HAINES** if the way she understood his bill to read, that he would require the counties to impose building codes on the whole county, was a fight in which he was willing to participate. He answered that he stood before the committee with only one issue and that was to give people who live outside the city the right to build their home without the building code enforcement of the cities. **SEN. COCCHIARELLA** reiterated that her interpretation of his bill will kill all building code enforcement in counties and felt it is important to address the issue.

SEN. COCCHIARELLA then expressed her concern to **Ana Mary Dussault** that, if this bill passes and counties have jurisdiction and language in the bill is left out, what that would mean. **Ms. Dussault** replied counties are not experts in building codes, because they have not done them before. The county commissioners of Missoula County would have two choices to make if this bill passes. One would be to adopt building codes and enforce those codes throughout the entire county. The second option would be to do nothing and leave it to the state to enforce those regulations that are applicable outside of the city limits. Her understanding was that the state does not inspect residential occupancies under fiveplexes.

Kevin Braun was then asked by **SEN. COCCHIARELLA** what the state is allowed to inspect.

CHAIRMAN DALE MAHLUM requested that **Ms. Dussault** revisit a previous issue which they discussed. He wanted to know if she would want the whole county under her jurisdiction or just certain, fast-growing areas. **Ms. Dussault** answered that commissioners would prefer to do certain areas of the county and not all of the county. She said there are legitimate public policy debates and arguments on both side of the issue. She thought it would be best for counties to have that debate at home, but Missoula County Commissioners have agreed to the county wide language and they understand the political ramifications of making that decision.

SEN. DON RYAN discussed Black Eagle, which is not in the city limits of Great Falls. He asked **Mr. Hansen** if the City of Great Falls could require the residents of Black Eagle to obtain building permits. **Mr. Hansen** answered only if the city of Great Falls were to adopt extraterritorial building codes.

Closing by Sponsor:

REP. HAINES closed by addressing some of the questions and comments he heard during the hearing.

{Tape: 4; Side: A}

EXECUTIVE ACTION ON HB 507

Motion/Vote: **SEN. COCCHIARELLA** moved that HB 507 BE CONCURRED IN. Motion carried 8-0. **SEN. SHERM ANDERSON** WILL CARRY THE BILL.

ADJOURNMENT

Adjournment: 11:47 A.M.

SEN. DALE MAHLUM, Chairman

SHERRIE HANDEL, Secretary

DM/SH

EXHIBIT (bus62aad)